As a result of increased focus on employee rights and safeguards, the Pennsylvania Department of Labor and Industry recently implemented new wage and hour regulations under the Pennsylvania Minimum Wage Act. These new regulations, which became immediately effective on August 5, 2022, make significant changes for employees who receive tips or service charges. There are five critical changes that directly affect all beverage and hospitality businesses operating within Pennsylvania. These new regulations include:
• An update on the definition of a “tipped employee.” Previously, Pennsylvania’s regulations were in line with the federal standard that only required a tipped employee to receive $30 per month in tips before an employer could reduce an employee’s hourly pay from $7.25 per hour. Now, Pennsylvania diverges from the federal standard and an employee must receive at least $135 in tips monthly before an employer can reduce the employee’s hourly pay.

• Now enshrined in Pennsylvania law is the existing federal “80/20 rule”. This rule now mandates that a “tipped employee” can spend no more than 20% of the workweek performing non-tipped duties and must spent at least 80% of their time doing work that can earn tips. This means if a server spends more than 20% of their work time completing such tasks as refilling ketchup bottles, preparing silverware, or preparing foods, their employer is not permitted to take a tip credit and must pay the full minimum wage for any time above the 20% threshold spent performing non-tipped activities.

• Updates to “tip pooling” to align with federal law. These updates make it clear that supervisors, owners, and managers are prohibited from participating in a tip pool and may only receive tips if they provide the entire service to a customer without help.

• For credit card and other noncash tips, Pennsylvania employers will no longer be able to deduct processing fees and it mandates that all gratuities paid by credit card are the tipped employee’s property.

• Finally, the regulations now provide that “service charges” are not tips to pay employees or used in determining if the employee reaches the $135 monthly tip threshold. Employers who charge these “service charges” must provide a notice to customers that the fee does not include an employee tip and must provide a place for customers to add a tip.

Considering the significant changes outlined above, Pennsylvania employers that employ tipped employees should review and revise, if necessary, their point-of-sale systems, as well as their policies and procedures to comply with the newly updated Pennsylvania Minimum Wage Act.

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