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Here's a Tip, Minnesota: Discharging Employees for Refusing to Share Gratuities is Prohibited

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Discharging an employee for refusing to share tips is illegal under the Minnesota Fair Labor Standards Act (MFLSA), according to the Supreme Court of Minnesota. *Burt v. Rackner, Inc.*, 2017 Minn. LEXIS 629 (Minn. Oct. 11, 2017). In *Burt* the plaintiff, who was employed as a bartender, was told that he needed to give more of his tips to the bussers or there would be consequences. The plaintiff failed or refused to do so and was discharged on the express basis that he was not properly sharing tips with other staff members. The plaintiff sued and, on motion by the employer, the state district court dismissed the complaint, holding that the MFLSA does not provide a private cause of action for wrongful discharge, as no such language is set forth in the statute. The court of appeals reversed, concluding that the MFLSA “unambiguously provides that the employee may seek wrongful-discharge damages, including back pay and other appropriate relief” for any violation of the Act, including the tip-sharing provision.

On petition for review, the Supreme Court affirmed. The Court noted that Section 177.24 of the Act provides that “[n]o employer may require an employee to contribute or share a gratuity” and although an employee may voluntarily agree to share tips, he must do so “without employer coercion or participation.” Threatening to discharge, or actually discharging, an employee for failing to do something – in this case, tip sharing – constitutes coercion, the Court held. Although the Act does *not* contain language expressly forbidding discharge for violations of the tip-sharing provision, and although it *does* include a specific remedy for violation of the provision (restitution of any diverted tips, plus double damages and attorney’s fees), the Supreme Court nonetheless concluded that because the statute includes a “broad, private cause of action for any violation,” it was unreasonable to interpret the statute in such a way that prohibits mandatory tip-sharing yet would allow the discharge of an employee who refused to abide by the prohibited conduct.

As a result, Minnesota employers should proceed cautiously when implementing a tip-sharing policy and program to ensure that participation in any such program is strictly voluntary and that no employee is pressured into participating or subjected to adverse action for declining to participate.

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