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Credit Card Fees/Costs Should Not Be Passed On To Employees

03/30/26

The New Jersey Administrative Code. § 12:56-3.5(g) establishes a clear and absolute prohibition against employers deducting credit card fees from an employee's tip. The regulation states that "the employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than as wages or in furtherance of a valid tip pool; this includes, **a prohibition against the employer using an employee's tips to pay any portion, however small, of the fee charged to the employer by a credit card company or other financial institution.**"

A "tip" is defined as "a sum presented by a customer as a gift or gratuity in recognition of some service performed" and emphasizes that "whether a tip is to be given, and its amount, are matters determined solely by the customer." The **definition of tip excludes mandatory charges, like a "service" fee, where the customer lacks discretion. Therefore, services fees can be used to pay the credit card fee**

Employer Liability and Potential Damages

An employer's misappropriation of an employee's tip to allocate it to credit card processing fees is a violation of the NJ wage and hour law. Resulting damages include payment of the amount owed plus a mandatory 200% in liquidated damages. However, "[t]he payment of liquidated damages shall not be required for a first violation by an employer if the employer [1] shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and [2] the employer had reasonable grounds for believing that the act or omission was not a violation, and [3] the employer acknowledges that the employer violated the law and [4] pays the amount owed within 30 days of notice of the violation."

The statute of limitations is 6 years so an employer would be responsible for all violations occurring within the past 6 years from when they were made aware of the violation.

Takeaway: Employers should review their policies and practices to ensure that violations are not occurring. If any issues are identified, they should be remedied as soon as possible. For questions or guidance, contact a member of our [Employment Law team](#).

Attorney

- Tracy Armstrong

Practice

- Employment Law