

PPP Loan Disrupts Tip Sharing for Restaurants and Bars

By Sarah Dolezal

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As some states and local areas are reopening businesses, restaurants and bars that have received a loan (https://shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/small-businesses-may-be-eligible-for-payroll-protection-loans-during-pandemic.aspx?_ga=2.259837897.27400191.1592916851-1115212092.1585337636) through the Paycheck Protection Program (PPP) are revamping their business model to accommodate the guidelines. Instead of bringing back a full staff at once, many restaurant owners or managers have reconstructed their employees' working hours, internal tip-pooling policies and schedules, for both the front-of-house and the back-of-house workers. It's all caused confusion for many employers and employees.

[Update: The U.S. Senate voted June 30 to extend the PPP for five weeks (<https://thehill.com/homenews/505360-senate-extends-application-deadline-for-ppp-small-business-loans>), until Aug. 8. The House of Representatives will need to vote on the extension for it to take effect.]

State of Flux

Companies that have received PPP loans say they need more information and guidance from the Small Business Administration (SBA), which administers the loans. Plus, the PPP loan rules are continuously changing, and businesses say they don't know how or when they can spend the money and be assured the loan will be forgiven.

Norman LeClair is chief stewardship officer of Corban OneSource, an outsourcing service that assists businesses with payroll administration. He is trying to close the communication gap so that businesses can make the best decisions on how to spend the PPP loan money. LeClair said that "right now, there's a lot of flux happening, which is causing my clients to get antsy. However, once the concrete guidelines come out, the ambiguity will hopefully be eliminated as to how to spend the PPP loan money in order for the loan to be fully forgiven."

LeClair's company serves clients in 48 states, 13 countries and over 21 industries, including restaurants. He noted that his clients are trying to get answers when the goal posts are constantly moving.

"The vast majority of business owners do not know what to do with the money distributed by the PPP loan," he explained. "I'm constantly getting phone calls from other CEOs asking about the regulations and the guidance on the PPP loan so that they are using the money as directed."

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Tip Pooling

Feedback

Jennifer Terry, an employment law attorney and partner based in Los Angeles at the law firm Reed Smith, said the restaurant industry is getting hit hard by the new operating guidelines set amid the coronavirus outbreak. "They are having to consider federal, state, county and local health guidelines in their reopening plan, and for restaurant chains with many locations, this can be a daunting task, as each location varies as to what is required," Terry said. She represents restaurants in the quick-service space, as well as companies with several restaurant brands, including higher-end restaurants.

Terry said the restaurant employers that received the PPP loan must reinstate their full-time employees' salaries, which includes cash tips or the equivalent under the PPP, by Dec. 31, 2020, or else they will not qualify for loan forgiveness. As an employer, Terry said, "you want your good people to come back, and with the PPP loan, employers are incentivized to bring back employees as soon as possible."

Some employers that received the PPP loan are changing their tip policies to create tipping pools so that tips—and the impact of COVID-19—are shared equally among all employees. Tip pooling spreads the risk of having few and low-tipping patrons among all tipped employees.

Employee Dissatisfaction

Most U.S. restaurants follow a similar wage policy by which servers share a percentage of tips with the front-of-house staff, who typically include bartenders or server assistants, and then they keep the remaining tips—usually a significant portion of their income. However, because of the new wage and hour standards set after a business has received the PPP loan, restaurant servers and bartenders across the country have quit their jobs or have become uneasy about working at restaurants.

[SHRM members-only sample policy: *Tip Pooling* (www.shrm.org/ResourcesAndTools/tools-and-samples/policies/Pages/tippoolingpolicy.aspx)]

In Illinois, for example, an employee who worked as a bar manager and server at a midsize local restaurant outside Chicago quit after he was not given straightforward answers from the owner about how tips were being allocated under the restaurant's new tipping policy. In Indiana, a server at a mom-and-pop restaurant left once the restaurant received the PPP loan because she was unable to take home the same amount in tips as she did before mid-March. And a manager at an upscale restaurant in Maryland is uncomfortable with charging to every guest's check the restaurant's new, automatic 20 percent gratuity, imposed to supplement drastically reduced revenue.

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Feedback

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Feedback