



Legal Alert: No Private Right of Action for Violation of California Law Prohibiting Employers from Taking Tips Left For Employees

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California's Labor Code section 351 prohibits employers from taking any gratuity left by patrons for its employees, and states that such gratuity belongs solely to the employee for whom it was left. In the recent case of *Lu v. Hawaiian Gardens Casino, Inc.*, California's Supreme Court held that employees do not have a private right of action under section 351.

Lu, a card dealer, filed a class action against his employer, a casino, alleging that his employer's policy of requiring dealers to contribute 15 to 20 percent of their tips to a tip pool to be shared among certain employees who provide a service to patrons violates section 351. Under the casino's policy, tips contributed to the pool were deposited into a tip pool bank account and later distributed to certain employees who provide customer service. The tip pool policy prohibited managers, and supervisors from participating in the tip pool.

Resolving a split among the courts of appeal, California's Supreme Court held that section 351 does not provide a private cause of action for employees to recoup gratuities collected by an employer. The Supreme Court analyzed the legislative history of the statute and concluded that the legislature did not intend to create a private cause of action under the statute. However, the Court specifically stated that its ruling does not foreclose other remedies, including a claim for conversion to obtain misappropriated tips. Likewise, employees may sue for unfair business practices based on section 351.

Employers' Bottom Line:

Although this decision will prevent employees from bringing claims under section 351, it will not prevent them from pursuing other theories of liability based on section 351, including claims for conversion and unfair business practices. However, unlike section 351, these other theories of liability do not carry the potential for attorneys' fees awards. Further, monetary damages are not available under an unfair business practices cause of action. The Court, therefore, limited potential monetary awards for violations of section 351.

If you have any questions regarding this decision or other labor or employment related decisions, please contact the author of this Alert,

Michelle Rapoport, mrapoort@fordharrison.com or the Ford & Harrison attorney with whom you usually work.