



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

March 11, 2010



Re: Request For Opinion
Tips/Credit Card Fees
RO-09-0164

Dear [REDACTED]:

This letter is written in response to your letter of November 13, 2009, in which you seek an opinion from this Department confirming that an employer may lawfully deduct the pro rata share of a credit card company's fee from a tip paid via credit card before "tipping out" an employee at the end of his or her shift.

Section 196-d of the Labor Law provides that an employer may not "retain any part of a gratuity or of any charge purported to be a gratuity for an employee." In other words, an employer may not keep any part of an employee's tips. The Department recognizes, however, that it is a common practice for restaurant customers to pay for both meals and tips with credit cards. The Department also recognizes that credit card companies charge businesses a fee based on a percentage of the total amount charged. Based on these circumstances, the Department of Labor has interpreted Labor Law §196-d to mean that the amount of a credit card charge deemed to be a tip may be reduced by the percentage charged by the credit card company. For example, if the customer pays a \$2.00 tip via credit card, and the credit card company charges a 2% fee (i.e. \$0.04) for processing such transaction, the employer may lawfully retain such processing fee and remit to the employee \$1.96 rather than the full \$2.00. Under no circumstances, however, may the employer retain any part of the tips paid in cash, nor any portion of a tip paid by credit card that is greater than the amount charged by the credit card company. If, for example, an employee receives, during a single week, \$100.00 in tips paid via cash and \$100.00 in tips paid via credit card, and the credit card company charges a 2% fee, the employer must remit to the employee the full \$100.00 in cash tips and no less than \$98.00 of the credit card tips.

This opinion is based on the information provided in your letter of November 13, 2009. A different opinion might result if any facts provided have been inaccurately

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stated, or if there are other relevant facts that have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro
Associate Attorney

JGS:mp

cc: Carmine Ruberto