

FREQUENTLY ASKED QUESTIONS FOR THE HOSPITALITY INDUSTRY

IMPORTANT NOTE ABOUT THIS Q&A: *The content of this Q&A is for general guidance purposes only and does not constitute legal advice about compliance with applicable laws. Please consult an attorney of your choice if you would like advice about any of the issues discussed below.*

1. Can an employer divide a compulsory charge between any employees? For example, can a manager divide a gratuity charge from a large wedding between the cooks, hostess, and wait staff by deciding what percentage of the gratuities each employee receives?

See [Department of Labor, Wage and Hour Division, Fact Sheet: Tipped Employees Under the Fair Labor Standards Act.](#)

According to the Department of Labor, “A compulsory charge for service, for example, 15 percent of the bill, is not a tip. Such charges are part of the employer's gross receipts. Sums distributed to employees from service charges cannot be counted as tips received, but may be used to satisfy the employer's minimum wage and overtime obligations under the FLSA. If an employee receives tips in addition to the compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and in the application of the tip credit.”

Because a compulsory charge is not considered a tip, it can be divided among various employees in an equitable manner. A tip, on the other hand, is the sole property of the employee who receives it and the tipped employee cannot be required to share the tip unless there is a valid tip-pooling arrangement among employees who customarily and regularly receive tips.

2. If an employee cashes a two-party check against company policy, can the employee be held liable for all or part of the lost money if the check bounces?

See [Wage Offset Rules, Ch. I § 6 \(b\)\(vi\).](#)

Wyoming law permits the following offset from an employee's wages:

Any sums deducted from wages for damages suffered by the employer due to the employee's negligence, provided:

(a) That the employee's negligence is determined by a judicial proceeding;

- (b) That the amount of the damage suffered by the employer is determined by a judicial proceeding;
- (c) That the negligence and damages arise in the course of employment; and
- (d) That the employer has not received payments, compensation, or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages. Where the employer has received payments, compensation, or any form of restitution from any insurer assurer, surety or guaranty to cover any of the damages caused by the employee's negligence, the sum of the offset shall not exceed the amount of any applicable deductible or two hundred fifty dollars (\$250.00) whichever is less.

Keep in mind that, even where a deduction is permissible under the Wyoming wage offset rules, you cannot make deductions that bring an employee's compensation below minimum wage.

3. Is there any limit on how many hours an exempt employee can work in a workweek?

The Fair Labor Standards Act does not place a limit on the number of hours an exempt employee can work in a workweek.

4. Is it okay to pay a final check via direct deposit, if requested by the employee, later than 5 days after the termination date?

Wyoming law requires final payment to be issued within five days of termination. You must comply with this requirement regardless of an employee's consent to an alternate pay schedule.

See [Wyo. Stat. § 27-4-104](#).

(a) Whenever an employee quits the service or is discharged, the employee shall be paid whatever wages are due him in lawful money of the United States of America, or by check or draft which can be cashed at a bank, within five (5) working days of the date of termination of employment. The employer may offset from any monies due the employee as wages, any sums due the employer from the employee which have been incurred by the employee during his employment. This section does not apply to the earnings of a sales agent employed on a commission basis and having custody of accounts, money or goods of his principal where the net amount due the agent may not be determinable except after an audit or verification of sales, accounts, funds or stocks.

(b) Whenever an employee who has quit or has been discharged from service has cause to bring suit for wages earned and due, and shall establish in court the amount which is justly due, the court shall allow to the plaintiff interest on the past due wages at the rate of eighteen percent (18%) per annum from the date of discharge or termination, together with a reasonable attorney fee and all costs of suit. Prosecution of a civil action to recover unpaid wages does not preclude prosecution under W.S. 27-4-105.

See [Wyo. Stat. § 27-4-101\(b\)](#).

Every employer shall, at the time of each payment of wages, furnish each of his employees with a detachable part of the check, draft or voucher, paying the employees' wages, giving an itemized statement in writing showing all deductions made from such wages. If the employer does not make his payroll payments in the aforementioned manner, then he shall provide such itemized statement on a slip attached to such payment. Nothing in W.S. 27-4-101 through 27-4-103 shall be construed to prohibit an employer from depositing wages due or to become due or an advance on wages to be earned, in an account in any bank, savings and loan association, credit union or other financial institution authorized by the United States or one (1) of the several states to receive deposits in the United States if the employee has voluntarily authorized such deposit.

5. Can an employer deduct cash shortages (divided evenly) from all employees who have access to the cash drawer during a shift?

See [Wage Offset Rules, Ch. I § 6 \(b\)\(ix\)](#).

Wyoming law permits the following offset from an employee's wages:

Any sums deducted from wages resulting from cash shortages, provided:

- (a) That the employee gives written acknowledgement upon beginning employment that he or she shall be responsible for any such shortages.
- (b) That the employer and employee verify in writing the amount of cash that is in the register or cash box at the beginning of the employee's work period;
- (c) That the employer and employee verify in writing the amount of cash that is in the register or cash box immediately at the end of the employee's work period; and
- (d) That the employee be the sole and absolute user and have sole access to the register or cash box from the time checked in under subsection (B) until the time checked out under subsection (C).

Keep in mind that, even where a deduction is permissible under the Wyoming wage offset rules, you cannot make deductions that bring an employee's compensation below minimum wage.

6. Can the owner or manager of an establishment receive tips if they are one of two employees working? What if the owner pays him or herself as an employee?

Under federal law and Wyoming law, a tip is the property of the employee/employees who receive it. Therefore, regardless of a person's job title, if he/she receives a tip for the services he/she performs, he/she is allowed to keep the tip. A different situation, however, is presented where an owner/manager attempts to collect a portion of the tips received by other employees. For more information on the legal requirements surrounding tip-pooling arrangements:

See [Department of Labor, Wage and Hour Division, Fact Sheet: Tipped Employees Under the Fair Labor Standards Act.](#)

A valid tip pool may not include employees who do not customarily and regularly receive tips, such as dishwashers, cooks, chefs, and janitors.

When an employee is employed by one employer in both a tipped and a non-tipped occupation, such as an employee employed both as a maintenance person and a waitperson, the tip credit is available only for the hours spent by the employee in the tipped occupation. The FLSA permits an employer to take the tip credit for some time that the tipped employee spends in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips. For example, a waitperson who spends some time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses is considered to be engaged in a tipped occupation even though these duties are not tip producing. However, where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties.

7. What if an employee owes you money or has property of yours, can you hold the final check until the employee returns the property or cash?

You can't withhold an employee's entire check but must instead pay out final wages within five days of termination. For information regarding proper offsets to an employee's final wages, please see the pertinent Wyoming wage offset rules and regulations. [Wage Offset Rules, Ch. 1 § 6.](#)

8. How long do we need to keep employee files after they are no longer working for us?

See general guidance provided in recordkeeping chart posted [here](#).

9. Are we required to offer a break to an employee who works at least an 8-hour shift?

See [Department of Labor guidance on breaks and meal periods](#).

Federal law does not require lunch or coffee breaks. However, when employers do offer short breaks (usually lasting about 5 to 20 minutes), federal law considers the breaks as compensable work hours that would be included in the sum of hours worked during the work week and considered in determining if overtime was worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished.

Bona fide meal periods (typically lasting at least 30 minutes), serve a different purpose than coffee or snack breaks and, thus, are not work time and are not compensable.

10. With regard to vacation, is it okay to clearly state in your policies that unused vacation time may be paid out upon termination if the employee leaves on favorable terms?

This is permissible, but not necessarily advisable. Such a policy lends itself to vast employer discretion, which may give rise to claims of discrimination. The purpose of vacation time is to give employees a break from work and to rejuvenate them, thereby making them more productive. Many employers therefore have chosen not to pay out vacation time upon termination but instead to encourage employees to use the vacation time during employment. For a sample policy regarding vacation/PTO time accrued in Wyoming, please click [here](#). See also [Wyoming Statute 27-4-501\(a\)\(iii\)](#).