

STATE OF NEVADA

JOE LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

BRETT K. HARRIS, ESQ.
Labor Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER

August 12, 2025

Via Email and U.S. Mail

Jason Hicks
Greenberg Traurig, LLP
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Las Vegas, NV 89135
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Re: Request for Advisory Opinion—Tip Pooling Policy

Dear Mr. Hicks,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested clarifying which employees that perform some managerial tasks may be included in a tip pooling policy.

FACTS PRESENTED

In your Request for Advisory Opinion, you pose the following question and present the following facts:

The Fair Labor Standards Act (“FLSA”) prohibits managers or supervisors from keeping tips or receiving tips from a tip pool, regardless of whether they are engaged in tip-producing work. *See* 29 C.F.R. § 531.54. Under Nevada law, tip pool policies are permissible, so long as the employer and managerial employees do not keep any portion of the tip for themselves. *See* N.R.S. 608.160(2); *see also Wynn Las Vegas, L.L.C. v. Baldonado*, 129 Nev. 734 (2013). What is unclear is whether employees who do not qualify as managers or supervisors under the FLSA or Nevada law, but perform certain managerial or supervisory tasks, may to any extent lawfully participate in a tip pool with other hourly, non-exempt employees. We respectfully request that the Office of the Labor Commissioner provide guidance and an advisory opinion on the following question:

Whether under Nevada law, an hourly, non-exempt employee who performs some managerial tasks-but does not have the ability to hire, fire, discipline, schedule, or otherwise set the working conditions of other employees-may be included in a tip pool for a pro-rated amount corresponding to the percentage of non-managerial tasks performed.

Summary of Facts

Our client is considering including three positions in the tip pool for which we would like an opinion: (1) Assistant General Manager, (2) Manager, and (3) Shift Supervisor. Despite the titles of these positions, the job descriptions and day-to-day tasks each performs is not exclusive to typical managerial functions. Rather, each spends some portion of their day performing crew work for which they would typically be eligible to participate in the tip pool. Below, we provide a summary of their job descriptions as well as a general description of the tip pool policy.

(1) Assistant General Manager

An Assistant General Manager assists the General Manager in achieving restaurant objectives, including assisting, assigning, directing and following up on activities of managers and other team members. The Assistant General Manager works under the direction of the General Manager to ensure compliance with all Company policies and procedures. An Assistant General Manager also performs customer facing tasks and other team member duties while working with the restaurant management team.

The following excerpt is taken verbatim from the Position Description for an Assistant General Manager:

Under the direction of the General Manager, provides direct supervision to others. Provides functional guidance to team members including delegating assignments, instruction and follow up. Carries out opening and closing procedures. May provide secondary supervision to team members under direction of or during the absence of the General Manager, but does not have the authority to hire, schedule, discipline or terminate employees.

Aside from this statement, the job description itself shows that managerial tasks will not account for more than 50% of the employee's duties. This is illustrated by the tasks identified in the Position Description, listed below, which are not primarily managerial in nature:

- Trains, monitors and reinforces food safety procedures to subordinate managers and team members. Ensures all Company food safety procedures are followed. Ensures that all health, safety and sanitation requirements are met in accordance with federal, state and local standards.
- Maintains safe working conditions by following and enforcing all Company safety, security and maintenance policies and procedures.
- Performs customer facing tasks and other team member duties.
- Assists in hiring, developing, evaluating, coaching and counseling Managers and Team Members in accordance with Company Human

Resources policies and procedures. Monitors tasks performed to ensure achievement of Company goals and objectives.

- Assists with entire store operations including, but not limited to, systems usage, recipe adherence, payroll and timekeeping procedures, and guest interactions. Takes corrective action as necessary.
- Assists with profit and loss management through cash control / security policies and procedures, maintaining inventory, food cost, managing labor and reviewing financial reports. Takes corrective action as necessary.
- Assists with inventory and orders / purchases food and supplies while applying appropriate cost control measures.
- Assists in generating Manager and Team Member schedules ensuring coverage appropriate to drive sales and profits.
- Assists in local restaurant marketing efforts.
- Performs other job-related duties as may be assigned or required.

(2) Manager

A Manager assists the General Manager in achieving restaurant objectives, including assisting, directing, and following up on activities of team members. The Manager works under the direction of the General Manager to ensure compliance with all Company policies and procedures. A Manager also performs customer facing tasks and other team member duties while working with the restaurant management team.

The following excerpt is taken verbatim from the Position Description for a Manager:

Though this position does not provide direct supervision to others, job responsibilities may include providing functional guidance to team members including delegating assignments, instruction and follow up. Carries out opening and closing procedures on their shifts. May provide secondary supervision to team members under direction of or during the absence of the General Manager, but does not have the authority to hire, schedule, discipline or terminate employees.

Aside from the express statement that this employee does not have managerial authority, the job description itself shows that managerial tasks will not account for more than 50% of the employee's duties. This is illustrated by the tasks identified in the Position Description, listed below, which are not primarily managerial in nature:

- Trains, monitors and reinforces food safety procedures to team members. Ensures all Company food safety procedures are followed. Complies with all health / sanitation regulations.
- Maintains safe working conditions by following and enforcing all Company safety, security and maintenance policies and procedures.
- Performs customer facing tasks and other team member duties.
- Monitors tasks performed by team members to ensure product quality and guest satisfaction.
- Monitors and follows up with team members regarding food preparation and Company procedures to minimize food cost.
- Monitors labor usage against sales and takes corrective action where necessary.
- Executes, trains and monitors proper cash control procedures.
- Ensures proper training for team members through established training systems. Provides ongoing coaching to team members.
- Assists General Manager in ensuring compliance with all other Company policies and procedures.
- Performs other job-related duties as may be assigned or required.

(3) Shift Supervisor

A Shift Supervisor assists store management in achieving restaurant objectives and works with the store management to ensure compliance with all Company policies and procedures. A Shift Supervisor also performs customer facing tasks and other team member duties while working under the direction of the restaurant management team.

The following excerpt is taken verbatim from the Position Description for a Shift Supervisor:

Though this position does not provide direct supervision to others, job responsibilities may include providing functional guidance to team members including delegating assignments, instruction and follow up. May carry out opening and closing procedures in the absence of management. May provide secondary supervision to team members under direction of or during the absence of the General Manager, but does not have the authority to hire, schedule, discipline or terminate employees.

Aside from the express statement that this employee does not have managerial authority, the job description itself shows that managerial tasks will not account for more than 50% of the employee's duties. This is illustrated by the tasks identified in the Position Description, listed below, which are not primarily managerial in nature:

- Trains, monitors and reinforces food safety procedures to team members. Ensures all Company food safety procedures are followed. Complies with all health / sanitation regulations.
- Maintains safe working conditions by following and enforcing all Company safety, security and maintenance policies and procedures.
- Performs customer facing tasks and other team member duties.
- Monitors tasks performed by team members to ensure product quality and guest satisfaction.
- Monitors and follows up with team members regarding food preparation and Company procedures to minimize food cost.
- Monitors labor usage against sales and takes corrective action where necessary.
- Executes, trains and monitors proper cash control procedures.
- Ensures proper training for team members through established training systems. Provides ongoing coaching to team members.
- Performs other job-related duties as may be assigned or required.

Proposed Tip Pool Policy

The proposed tip pool policy would include the Assistant General Managers, Managers, and Shift Supervisors in the general hourly, non-exempt tip pool, with their eligibility to be limited to the pro-rated percentage of time spent performing tipped work. For example, the Assistant General Manager position performs tipped eligible work for at least 50% of their workweek, and under the tip pool policy they would be eligible to share in the tip pool for a portion of the time spent performing such work. The Manager position performs tipped eligible work for at least 50% of their workweek, and they would be eligible to share in the tip pool for the time spent performing such work. Similarly, because the Shift Supervisor position performs tipped eligible work for at least 75% of their workweek, they would be eligible to share in the tip pool for the time spent performing such work. The Assistant General manager, Manager, and Shift Supervisor would receive no tips for the time spent performing any managerial or supervisory tasks.

LEGAL AUTHORITY

NRS 608.160 Taking or making deduction on account of tips or gratuities unlawful; employees may divide tips or gratuities among themselves.

1. It is unlawful for any person to:
 - (a) Take all or part of any tips or gratuities bestowed upon the employees of that person.
 - (b) Apply as a credit toward the payment of the statutory minimum hourly wage established by any law of this State any tips or gratuities bestowed upon the employees of that person.
2. Nothing contained in this section shall be construed to prevent such employees from entering into an agreement to divide such tips or gratuities among themselves

ANALYSIS

NRS 608.160(2) clearly does not preclude employees from pooling tips between themselves. There are no provisions in the statute that exclude certain employees from participating in tip-pooling due to their position title, position description, or position duties whether they are managerial or supervisory in nature or not. NRS 608.160(1)(a) makes it clear that employers may not take all or any portion of the tips from their employees.

Nevada case law permits mandatory tip pooling by employers. Employers may include employees in different positions and ranks in mandatory tip pools. However, the employer may not keep any portion of the tips for itself. *Wynn Las Vegas, L.L.C. v. Baldonado, et al.*, 129 Nev., Advance Opinion 78 (Oct. 31, 2013).

Although the Nevada labor laws do not preclude employees in management or supervisory positions from participating in tip-pooling, employers must still ensure proper compliance with Federal requirements. The Labor Commissioner recommends you refer to the U.S. Department of Labor for further guidance related to this matter under the Fair Labor Standards Act (FLSA) requirements.

Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner may revisit this issue through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require that this Advisory Opinion be modified or abandoned. Should you need additional clarification, please do not hesitate to contact our office at (702) 486-2650.

Sincerely,



Brett K. Harris, Esq.
Labor Commissioner