

Secretary of the State File Number

6324

Regulation of the
Department of Labor
Concerning

Tip Credit

Regulations adopted after July 1, 2013, become effective upon posting to the Connecticut eRegulations System, or at a later date if specified within the regulation.

Posted to the Connecticut eRegulations System on **September 24, 2020**

EFFECTIVE DATE
September 24, 2020

Approved by the Attorney General on
July 28, 2020

Approved by the Legislation Regulation Review Committee on
September 22, 2020

Electronic copy with agency head certification statement electronically submitted to and received by the Office of the Secretary of the State on
September 24, 2020

IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES
This form should be used only for regulations first noticed *on and after March 23, 2015*.

Electronic Copy Certification Statement

(Submitted in accordance with the provisions of section 4-172 of the Connecticut General Statutes)

Regulation of the
CONNECTICUT DEPARTMENT OF LABOR
Concerning
Tip Credit

Approved by the Legislative Regulation Review Committee: **September 22, 2020**
eRegulations System Tracking Number: * **PR2020-014**

I hereby certify that the electronic copy of the above-referenced regulation submitted herewith to the Secretary of the State is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170 of the *Connecticut General Statutes*.

And I further certify that in accordance with the approval of Legislative Regulation Review Committee, all required technical corrections, page substitutions and deletions, if any, have been incorporated into said regulation.

In testimony whereof, I have hereunto set my hand on **September 23, 2020**.



Kurt Westby

Commissioner

Connecticut Department of Labor

State of Connecticut
Regulation of
Department of Labor
Concerning
Tip Credit

Section One. Section 31-60-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-60-2. Gratuities as part of the minimum fair wage

For the purposes of this [regulation] section, “gratuity” means a voluntary monetary contribution received by the employee from a guest, patron or customer for service rendered.

[(a)] Unless otherwise prohibited by statutory provision or by a wage order gratuities may be recognized as constituting a part of the minimum fair wage when all of the following provisions are complied with: (1) The employee shall be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes and (2) the amount received in gratuities claimed as credit for part of the minimum fair wage shall be recorded on a daily, weekly, or bi-weekly basis [as a separate item] in [the] a wage record, even though payment is made more frequently and (3) each employer claiming credit for gratuities as part of the minimum fair wage paid to any employee shall provide substantial evidence that not less than the amount claimed, which shall not exceed the allowance hereinafter provided, was received by the employee. For example, an attestation or statement in electronic or written format [a statement signed by the employee] demonstrating that wages received by the service employee, including gratuities [not to exceed the amount specified herein], together with other authorized allowances, represents a payment of not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked during the pay period, will be accepted by the commissioner as substantial evidence for purposes of this section, provided all other requirements of this and other applicable regulations shall be complied with. Such attestation, statement, or substantial evidence shall satisfy the requirements of subdivisions (2) and (3) of this section.

[(b)] Allowance for gratuities as part of the minimum fair wage shall not exceed twenty-three percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for hotel industries or not more than thirty-five cents per hour for employees in any other industry in which it can be established that gratuities have, prior to July 1, 1967, customarily and usually constituted and been recognized as part of the employee’s remuneration for hiring purposes for that particular employment. Gratuities received in excess of the amount specified herein as allowable need not be reported or recorded for the purposes of this regulation. The wage paid to each employee shall be at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked, which may include gratuities not to exceed the limitation herein set forth, provided all conditions herein set forth shall be met.]

Sec. 2. Section 31-62-E2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-62-E2. Definitions

As used in sections 31-62-E1 to 31-62-E15, inclusive, of the Regulations of Connecticut State Agencies:

(a) “Restaurant occupation” includes all persons engaged in the preparation and serving of food for human consumption, or in any operation incidental or supplemental thereto irrespective of whether the food is served at or away from the point of preparation, and irrespective of whether the preparation and serving of food is the sole business of the employing establishment or enterprise, with the exception that this definition shall not include the preparation and serving of food in a nonprofit educational, charitable or religious organization where the food service is not regularly available to the general public, or the preparation and serving of food in hospitals, convalescent homes or homes for the elderly where the food service is not regularly available to the general public and is incidental to the care of the patient.

This occupation includes but is not limited to employees of restaurants, cafeterias, that portion of hotel business involving the preparation and serving of food, commissaries, dairy bars, grills, coffee shops, luncheonettes, sandwich shops, tearooms, nightclubs, cabarets, automats, caterers, frankfurter stands, operators of food vending machines, and that portion of the business involving the serving of food in department and variety stores, drugstores, candy stores, bakeries, pizzerias, delicatessens, places of amusement and recreation, commercial and industrial establishments and social, recreational, fraternal and professional clubs which either regularly or intermittently serve food, as well as other establishments or businesses meeting the condition stated in this [paragraph] subsection.

(b) “Restaurant employee” means any person who is employed or permitted to work in any restaurant occupation, establishment or enterprise.

~~(e)~~(c) “Service employee” means any employee whose duties relate solely to the serving of food [and/or] or beverage to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. [For the purpose of this order, a person shall not be considered to customarily receive gratuities unless a minimum of ten dollars per week in gratuities is received in the case of full-time want employees, or two dollars per day in the case of part-time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer.]

(d) “Duties incidental to such service” means performance of the following tasks:

- (1) Taking orders from patrons for food or beverages;
- (2) Checking with customers to ensure that they are enjoying their meals and taking action to correct any problems;
- (3) Checking patrons’ identification to ensure that they met minimum age requirements for consumption of alcoholic beverages;
- (4) Collecting payments from customers;
- (5) Writing patrons’ food orders on order slips, memorizing orders, or entering orders into computers for transmittal to kitchen staff;
- (6) Preparing checks that itemize and total meal costs and sales taxes;
- (7) Presenting menus to patrons and answering questions about menu items, making recommendations upon request;
- (8) Removing dishes and glasses from tables or counters and taking them to the kitchen for cleaning;
- (9) Serving food or beverages to patrons, and preparing or serving specialty dishes at tables as required;
- (10) Cleaning tables or counters after patrons have finished dining;
- (11) Preparing tables for meals, including setting up items such as linens, silverware, and

glassware;

(12) Explaining how various menu items are prepared, describing ingredients and cooking methods;

(13) Escorting customers to their tables;

(14) Cleaning tables and floors in service employee's immediate service area before, during, or after serving patrons;

(15) Cleaning and tidying up server stations and drink stations;

(16) Informing customers of daily specials;

(17) Preparing hot, cold, and mixed drinks for patrons, including brewing coffee and chilling bottles of wine;

(18) Rolling silverware, setting up food stations, or setting up dining areas to prepare for the next shift or for large parties;

(19) Stocking service areas with supplies such as coffee, food, tableware, and linens;

(20) Bringing wine selections to tables with appropriate glasses, and pouring wines for customers;

(21) Filling salt, pepper, sugar, cream, condiment, and napkin containers;

(22) Describing and recommending wines to customers; and

(23) Garnishing and decorating dishes in preparation for serving.

[(d)](e) "Non-service employee" means an employee other than a service employee, [as herein defined. A non-service employee] and includes, but is not limited to, countermaids, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities, [as defined above.]

[(e)](f) "Gratuities" means a voluntary monetary contribution received by the employee directly from a guest, patron or customer for service rendered.

Sec. 3. The Regulations of Connecticut State Agencies are amended by adding section 31-62-E2a as follows:

(NEW) Sec. 31-62-E2a. Service Employees

A service employee shall not be deemed to have performed service duties while an establishment is not open to patrons, shall not claim a credit for gratuities for the time a service employee works when an establishment is not open to patrons, and shall not include any portion of such time as part of the calculation of non-service duties when applying the provisions of section 31-62-E3a of the Regulations of Connecticut State Agencies.

Sec. 4. Section 31-62-E3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-62-E3. Gratuities as part of the minimum fair wage

Gratuities shall be recognized as constituting a part of the minimum fair wage when all of the following provisions are complied with:

(a) The employer shall be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes, and

(b) the amount received in gratuities claimed as credit for part of the minimum fair wage shall be recorded on a daily, weekly, or bi-weekly basis [as a separate item] in [the] a wage record even though the payment is made more frequently, and

(c) each employer claiming credit for gratuities as part of the minimum fair wage paid to any

service employee shall obtain substantial evidence as described in Section 30-60-2, such as a daily, weekly, or bi-weekly [an] attestation or statement in electronic or written format [a statement signed by the employee attesting] demonstrating that [he] the service employee has received in gratuities not less than the amount claimed as credit for part of the minimum fair wage. Such attestation or statement shall contain the week ending date of the payroll week for which credit is claimed. [Gratuities received in excess of twenty-three percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour, need not be reported or recorded for the purpose of this regulation.] Such attestation or statement may include documentation via an electronic point of service system or any other method that verifies the amount a service employee has received in gratuities for the pay period in question. Such attestation, statement, or substantial evidence shall satisfy the requirements of subsection (b) and this subsection.

Sec. 5. The Regulations of Connecticut State Agencies are amended by adding section 31-62-E3a as follows:

(NEW) Sec. 31-62-E3a. Service and non-service duties within the restaurant industry

(a) On any day that a service employee performs non-service employee duties:

(1) For two hours or more, or

(2) For more than 20 percent of the service employee's shift, whichever is less, the employer shall not claim credit for gratuities as part of the minimum fair wage for that day.

(b) If a service employee performs non-service duties during the course of a day's work in excess of the lesser of subdivision (1) or (2) of subsection (a) of this section, the employer shall segregate and record time spent on non-service duties to claim a credit for gratuities as part of the minimum fair wage for that day.

Sec. 6. Section 31-62-E4 of the Regulations of Connecticut State Agencies is repealed.

R-39 Rev. 02/2012

Statement of Purpose

The purpose of these proposed regulations is to implement section 5 of Public Act No. 19-1 concerning employees who perform both service and nonservice duties and allowances for gratuities permitted or applied as part of the minimum fair wage pursuant to section 31-60 of the Connecticut General Statutes.

IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES

This form is to be used for proposed permanent and technical amendment regulations only and must be completed in full.

AGENCY CERTIFICATION**Connecticut Department of Labor**

Proposed Regulation Concerning

Gratuities as Part of the Minimum WageeRegulations System Tracking Number **PR2020-014****I hereby certify the following:**

(1) The above-referenced **regulations** are proposed pursuant to the following statutory authority or authorities: **CGS §§ 4-8, 31-60, and P.A. 19-1.**

For technical amendment regulations proposed without a comment period, complete #2 below, then skip to #8.

(2) As permitted by Section 4-168(h) of the *Connecticut General Statutes*, the agency elected to proceed without prior notice or hearing and posted the text of the proposed technical amendment regulation on eRegulations System website on **<<select and enter the date of posting>>**.

For all other non-emergency proposed regulations, complete #3 - #7 below, then complete #8)

(3) The agency posted notice of intent with a specified comment period of not less than 30 days to the eRegulations System website on **April 15, 2020.**

(4) *(Complete one)* No public hearing held or was required to be held. **OR** One or more public hearings were held on: .

(5) The agency posted notice of decision to move forward with the proposed regulation to the eRegulations System website on **July 7, 2020.**

(6) *(Complete one)* No comments were received. **OR** Comments were received and the agency posted the statements specified in subdivisions (2) and (3) of CGS Section 4-168(e) to the eRegulations System website on **July 7, 2020.**

(7) The final wording of the proposed regulation was posted to the eRegulations System website on **July 7, 2020.**

(8) Subsequent to approval for legal sufficiency by the Attorney General and approval by the Legislative Regulation Review Committee, **the final regulation shall be effective**


(Check one and complete as applicable)

When posted to the eRegulations System website by the Secretary of the State.

OR On _____

(Date must be a specific calendar date not less than 11 days after submission to the Secretary of the State)

SIGNED


(Head of Board, Agency or Commission,
or duly authorized deputy)

Commissioner
OFFICIAL TITLE

7/7/2020
DATE


OFFICE OF THE ATTORNEY GENERAL REGULATION CERTIFICATION

Agency: Connecticut Department of Labor

REGULATION NUMBER PR2020-014

This Regulation is hereby APPROVED by the Attorney General as to legal sufficiency in accordance with Connecticut General Statutes Section 4-169.

DATE: July 28, 2020

Signed:  Digitally signed by Joseph Rubin, Asst. Dep. A.G.
Date: 2020.07.28 13:52:03
Asst. Dep. A.G.

*Joseph Rubin, Assistant Deputy Attorney General
Duly Authorized*

The Connecticut General Assembly

Legislative Regulation Review Committee

Senator Craig Miner
Senate Chair



Representative Susan Johnson
House Chair

Official Record of Committee Action

September 22, 2020

Agency: Department of Labor
Description: Tip Credit
LRRC Regulation Number: 2020-014
eRegulation Tracking Number: PR2020-014

The above-referenced regulation has been

Approved with Technical Corrections

by the Legislative Regulation Review Committee in accordance
with CGS Section 4-170.

Kirstin L. Breiner
Committee Administrator



State of Connecticut
Office of the Secretary of the State

Confirmation of Electronic Submission

Re: Regulation of the Department of Labor concerning Tip Credit
eRegulations System Tracking Number PR2020-014
Legislative Regulation Review Committee Docket Number 2020-014

The above-referenced regulation was electronically submitted to the Office of the Secretary of the State in accordance with Connecticut General Statutes Section 4-172 on September 24, 2020.

Said regulation is assigned Secretary of the State File Number 6324.

The effective date of this regulation is September 24, 2020.

A handwritten signature in black ink that reads "Denise W. Merrill".

Denise W. Merrill
Secretary of the State
September 24, 2020

By:

/s/ Kristin M. Karr

Kristin M. Karr
Administrative Law
Information Systems Manager