



Presents

Fiorito on Insurance

With **Bob Fiorito**



The Facts About Wage and Hour Compliance

(Employer Practices Coverage)

By Robert Fiorito, Insurance Expert at Hub International

Despite widespread attention on the New York State Department of Labor's new Hospitality Industry Wage Order, the issues of tip pooling, tip pool participation and tip pool distribution are still often misunderstood and continue to be an area of uncertainty for many restaurant owners/managers.

Many restaurant owners, even those who fully understand the laws surrounding tip pooling, are justly concerned about their exposure to risk associated with potential claims.

Many Employer Practices Liability Insurance (EPLI) policies simply exclude wage and hour coverage all together. While policies that do cover against this exposure will only provide coverage for defense costs of up to \$100,000. This means that if you have a deductible of \$25,000, your coverage may only amount to \$75,000 to be used toward legal fees associated with such a claim.

In addition, restaurants that have had a claim in the past may not be eligible for this coverage, even though it is likely that restaurants that have gone through this ordeal already are probably more likely to be in compliance than the restaurants that may be caught off-guard. Therefore, a thorough understanding of the law, as well as a strategy for how to implement a tip pooling procedure that is in compliance with your state, may be your "best" and in some cases "only" line of defense.

Depending on your state laws,

here are two general rules of thumb when dealing with the issue of tip pooling:

- 1) Never include a supervisor or staff member with supervisory or managerial responsibilities in any pool or sharing policy. Employers must look "beyond the job title" and analyze each staff member's service and non-service duties, in order to determine if their participation and/or coordination of the tip pool

is in compliance.
2) Ensure that all policies pertaining to tips, tip pooling and tip sharing are "recommended" and not mandatory, unless specifically approved by your state. While the court decision in *Cumby v. Woody Woo, Inc.* can sometimes be used to uphold the practice of employers collecting and redistributing tips to the entire labor pool, or even potentially kept by management (without

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TABLE TALK

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Protection Program provided a refresher on which farm products are approved for use in foodservice and how new legislation will help expand choices for chefs.**Nelson Martinez**, formerly at **Chakra** in Paramus, is the executive chef at **Bibi's Restaurant and Lounge**, 284 Center Ave, Westwood. He is a graduate of the **New York Restaurant School** and has more than seventeen years of experience in restaurants in New York City, Miami, and New Jersey. **Naomi Moschitta** is the pastry chef. She attended **Le Cordon Bleu** in Paris and previously worked at the **Greenwich Water Club** in Connecticut.... **Andrew Ricatelli**, previously a sous chef at **Stage Left Restaurant** in New Brunswick, is the chef at the **George Street Ale House**, 378 George St, New Brunswick....**La Silhouette**, a seasonal Franco-American restaurant, helmed by French native chef **David Malbequi**, formerly of the **Standard Hotel, BLT Market** and **Daniel**. **Vivian Wu**, who put in

time at **Eleven Madison Park** and **Del Posto**, is the pastry chef. Located 362 W 53rd St....**Hotel Williamsburg**, a new North Brooklyn hotel/condo with a rooftop bar, swimming pool, and views of the Manhattan skyline, will also feature a large restaurant, tentatively called "**Streets**,"....**François Payard** released some breaking news. The pastry chef, who opened his eponymous West Village bakery last September, is returning to the Upper East Side. Payard, who was forced to close his much-loved Lexington Avenue flagship in May 2009 following a steep rent hike, will open a new patisserie at 1330 Third Avenue. The chef is planning to open the location sometime in the spring, and plans to serve both pastry and savory items, as well as wine and champagne. In the meantime, Payard has closed his shop in the **Mauboussin** store and has turned his pop-up boutique in the **Plaza Hotel** into the permanent location of his **Payard Chocolate Bar**.

FIORITO

violating the Fair Labor Standards Act (FLSA), where FLSA is the only statute at issue), many states have wage and hour laws that override the Woody Woo verdict.

For example, in New York, the New York State Wage and Hour laws prohibit employers from retaining tips. In fact, tip pooling, as well as tip distribution must be voluntary and organized among employees who "customarily" receive tips. Even in states where there are no state law restrictions to tip pooling and distribution, an employer may face issues when tip distribution arrangements steer monies away from employees who are engaged in direct service.

In addition, a restaurant who may be in full compliance with the law, may still find itself burdened with the price tag for a defensive from a claim filed by a member of its wait staff, who is eagerly represented by a law firm experienced in filing these types of lawsuits.

As wage and hour issues, such as tip pooling, continue to pose a

problem for many restaurants, it's more important than ever to work with an insurance professional who can advise you about the latest coverage options and new products in the marketplace; one who truly understands the insurance needs of a restaurant or food service business. To identify and better understand the unique regulatory environment and coverages surrounding "tip pooling," as well as address specific questions you may have regarding your current coverage, contact Robert Fiorito at 212-338-2324 or robert.fiorito@hubinternational.com.

Robert Fiorito, serves as Vice President, Hub International Northeast., where he specializes in providing insurance brokerage services to the restaurant industry. As a 20-year veteran and restaurateur himself, Bob has worked with a wide array of restaurant and food service businesses, ranging from fast-food chains to upscale, "white tablecloth" dining establishments.

PANERA

It was in 2007 that Panera in northern and central New Jersey first partnered with CINJ on its Pink Ribbon Bagel campaign to support breast cancer research and care.

The Cancer Institute of New Jersey is the state's first and only National Cancer Institute-designated Comprehensive Cancer Center dedicated to improving the detection, treatment and care of patients with cancer, and serving as an education resource for cancer prevention. CINJ's physician-scientists engage in translational research, transforming their laboratory discoveries into clinical practice, quite literally bringing research to life.

HOTEL

in West Chester, Pennsylvania; the 304-room Crowne Plaza Meadowlands in Secaucus, New Jersey; and the 350-room Crowne Plaza Hartford in Hartford, Connecticut.

AHF

operated healthcare foodservice as industry best practice. AHF develops healthcare foodservice professionals, assuring food and nutrition services are valued as

an essential contributor to the healthcare organization's mission.

FOOD SHOW

Throughout the competition baristi must advance through various elimination rounds in a bid for the opportunity to participate in the final round, where finalists face-off against previously crowned "Ultimate Baristas" in an attempt to emerge the champion. Winners will also be awarded industry prizes, which in the past have included Vitamix blenders.

Participants in the Ultimate Barista Challenge are evaluated on their technical expertise, performance and beverage taste by expert judges from a variety of areas in the foodservice and coffee industries.

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