



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2008-18

December 19, 2008

Dear **Name***:

This is in response to your request for an opinion regarding whether section 3(m) of the Fair Labor Standards Act (FLSA)* permits employer-mandated tip pools to include employees who work in restaurants as itamae-sushi chefs and teppanyaki chefs. It is our opinion that itamae-sushi and teppanyaki chefs may participate in tip pools and be considered tipped employees under the FLSA.

Your letter states that itamae-sushi and teppanyaki chefs have direct contact and interact with customers. Itamae-sushi chefs prepare and serve sushi to customers in the bar area. Teppanyaki chefs, on the other hand, prepare meals on the teppan table located at customer tables and serve meals to customers. Servers assist itamae-sushi and teppanyaki chefs by taking orders for meals and drinks, and bussers remove plates and serve water.

Your letter states further that itamae-sushi and teppanyaki chefs participate in a tip pool with servers, bussers, bartenders, and counter persons. All tip pool participants receive more than \$30 per month in tips. Back-of-the-house employees such as cooks and dishwashers do not participate in the tip pool.

Section 3(t) of the FLSA describes a tipped employee as “any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.” 29 U.S.C. § 203(t). Section 3(m) of the FLSA allows a valid tip-pooling arrangement among employees who customarily and regularly receive tips. 29 U.S.C. § 203(m); *see* [29 C.F.R. § 531.54](#). The legislative history of the 1974 Amendments to the FLSA discussing tip pooling states that servers, bellhops, bussers, counter persons, and service bartenders are among those who may participate in a tip pool. It also states that janitors, dishwashers, chefs, and laundry room attendants are not tipped employees and, therefore, may not participate in a tip pool. *See* S. Rep. No. 93-690, at 42-3 (1974) (copy enclosed).

It has been our longstanding position that counter persons who serve customers may participate in tip pools. *See* Field Operations Handbook § 30d04(a). Itamae-sushi and teppanyaki chefs provide customer service similar to counter persons. *See* Wage and Hour Opinion Letter January 25, 1983 (waiter chef who brings food order from kitchen to table and cooks it on hibachi grill in front of customers may share in tip pooling) (copy

* Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

enclosed). Therefore, it is our opinion that itamae-sushi and teppanyaki chefs may also participate in tip pooling.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**