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Tip Pooling in Brewery Taprooms: Why Owners and Managers Need to Stay Out of the Jar

Pours are up, guests are generous, and a lot of taproom staff quietly assume that whoever is behind the bar at closing time gets a share of the jar, owner and shift manager included. That assumption is wrong, and it can be an expensive one.

So why can't a brewery simply divide the tip jar among everyone working the shift, owners and managers included?

The answer lies in federal wage and hour law governing tip pools, the Fair Labor Standards Act (FLSA), layered with state gratuity statutes. Minnesota and Wisconsin illustrate just how differently two neighboring states can treat the same federal baseline.

1. The FLSA Bars Owners, Managers, and Supervisors From the Pool

The federal Fair Labor Standards Act, which the U.S. Department of Labor summarizes plainly, states: "The FLSA prohibits an employer from keeping tips and from allowing a manager or supervisor to keep any portion of other employees' tips for any purpose." That bar applies even where the brewery pays full minimum wage and takes no tip credit.

There is a narrow exception. A manager who personally and solely serves a customer, with no assistance, can keep a tip that customer hands directly to the manager. What a manager cannot do is join the communal jar or POS tip pool and draw a share of **tips other employees earned**, even after spending the whole shift pouring beer alongside them.

2. Not Every "Manager" Is Actually a Manager for This Purpose

Job titles do not control. The Department of Labor applies the executive-exemption duties test: whether the person's primary duty is managing the enterprise or a department, whether the person regularly directs the work of at least two full-time employees or their equivalent, and whether the person has real (or meaningfully influential) hiring and firing authority. A "shift manager" who is really a lead bartender without genuine supervisory authority may not be excluded from the pool at all; a true general manager with real hiring and firing authority almost certainly is excluded, even if that person spends most of the shift behind the bar.

3. Owners Face Their Own FLSA Exposure

Federal law treats an owner with at least a bona fide 20% equity stake who is actively engaged in management as a manager or supervisor for tip pool purposes, excluding that owner from the pool. A smaller owner, say someone holding five percent, is not automatically excluded on ownership alone; the analysis falls back to the same duties test applied to any other employee.

4. Minnesota Adds a State-Law Property Right That Wisconsin Does Not Have

Minnesota Statutes Section 177.24, subdivision 3, provides that a gratuity is the "sole property of the employee" who received it, and goes further: "No employer may require an employee to contribute or share a gratuity received by the employee with the employer or other employees." Minnesota Rule 5200.0080, subpart 4, reinforces the point, stating that pooling or sharing of gratuities "may not be a condition of employment." Employees may voluntarily agree to share tips among themselves, but that agreement must be theirs, made without employer coercion or participation; the brewery's role is limited to safeguarding the jar, distributing what is owed, and handling tax reporting. The Minnesota Supreme Court underscored both halves of the rule in *Burt v. Rackner, Inc.*, 902 N.W.2d 448 (Minn. 2017): an employer cannot mandate tip sharing, and any voluntary arrangement must be free of employer coercion or participation. Section 177.24 also bars sharing gratuity "with the employer," so an owner who is legally the employer, or who is collecting the tip on the employer's behalf, is barred by the state statute regardless of how the federal duties test comes out.

5. Minnesota vs. Wisconsin: Two Different Approaches to the Same Federal Floor

The FLSA manager and supervisor exclusions described above apply identically in both states; that federal floor does not change at the state line. Where Minnesota and Wisconsin diverge sharply is on who controls the pooling arrangement itself. Minnesota, through Section 177.24, makes the tip the employee's sole property, bars an employer from requiring tip sharing, and insists that any pooling arrangement be voluntary and employee-created, with the brewery limited to an administrative role. Wisconsin has no equivalent statute: Wisconsin's wage statutes address tips only through the tip credit that employers may take toward the minimum wage, leaving the mechanics of tip pooling itself governed by the federal FLSA framework alone. Practically, that means a Wisconsin taproom, unlike a

Minnesota one, faces no separate state-law bar on an employer organizing or even mandating a tip-pooling arrangement, so long as the federal manager, supervisor, and qualifying-owner exclusions are respected. A compliance approach built for a Minneapolis taproom, where the brewery must stay hands-off and let staff set the pooling structure, does not need to be replicated in Milwaukee, where Wisconsin law imposes no such employer-neutrality requirement, although the FLSA's ban on managers and owners drawing from the pool still applies with full force.

Getting this wrong exposes a brewery to claims under state law, in Minnesota's case, and federal law in every state. The fix is usually inexpensive: separate true managers and active owners from the pool and ensure the tip-pooling arrangement complies with both federal and applicable state law. If you operate a taproom and want help sorting out who can and cannot share in your tip pool, reach out for guidance before the next shift closes out the till.

What This Means for You

Before the next shift ends, brewery owners and managers should confirm who is actually excluded from the tip pool under the FLSA's duties test, not just by job title, and should document that any owner holding a 20% or greater equity stake who is active in management is kept out of the pool. Minnesota taprooms carry an added layer of risk: the brewery's role should be limited to safeguarding and distributing tips and handling tax reporting, with any pooling arrangement left to employees to set up voluntarily and without employer involvement. Wisconsin taprooms are not subject to that state-law restriction, but the federal bar on managers, supervisors, and qualifying owners drawing from the pool still applies in full. A brief internal audit of who participates in the pool, and how that arrangement came together, is the most cost-effective way to avoid exposure under both state and federal law.

Contact Us

If you have questions about tip pooling compliance in your brewery taproom or need help structuring a compliant tip-sharing arrangement, contact Jeffrey O'Brien, Jonathon Duffy, or your Husch Blackwell attorney.

This article provides general legal information. It does not constitute legal advice to the reader and does not create an attorney-client relationship between the reader and Husch Blackwell LLP. The reader should seek legal advice if they have questions about how this legal information may apply to their own circumstances.