

Hospitality Labor and Employment Law Blog

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Are Your Employees' Tips Subject To Garnishment?

By [Matthew Sorensen](#)

Wage garnishment can pose a number of potential problems for hospitality businesses. This is particularly true where the employee whose pay is subject to garnishment receives tips.

Garnishment is a legal procedure in which an employee's earnings must be withheld by an employer for the payment of a debt under a court order. When faced with a garnishment order involving a tipped employee, the employer must determine whether all or part of the employee's tips must be included in the amounts withheld under the garnishment order. This question turns on whether or not the employee's tips may be characterized as "earnings" under the applicable garnishment statute. A mistake by the employer could lead to significant liability. Many state and federal laws concerning garnishment contain provisions that allow for direct employer liability for failing to timely respond to or follow a garnishment order. On the other hand, federal and state wage and hour rules can create liability for wrongfully withholding an employee's tips. A recent Tennessee Appellate court ruling provides some additional guidance in this area that will likely have broader application to hospitality businesses around the country.

In [Erlanger Medical Center v. Strong](#), the Tennessee Court of Appeals relied on guidance found in the [U.S. Department of Labor's Field Operations Manual](#) and a Wage and Hour Opinion Letter to hold that tips are not "earnings" that may be garnished. Specifically, the Court noted that "garnishment is inherently a procedural device designed to reach and sequester earnings held by the garnishee (usually the employer)." The Court went on to note that tips paid to an employee by a customer (including those paid by means of a credit card) are not "earnings" that may be garnished because they do not pass to the employer (the garnishee). Rather, tips are direct payments from customers to employees and are the property of the tipped employee.

This ruling is consistent with a recent decision by the Appellate Division of the New Jersey Superior Court which held that tips are not "earnings" subject to garnishment under New Jersey law. It is also bolstered by the [U.S. Department of Labor's 2011 amendments](#) to its rules defining the general characteristics of "tips." In those revised rules, the Department of Labor has stated that the Fair Labor Standards Act prohibits employers from using an employee's tips for any reasons other than as a credit against the minimum wage or as part of a valid tip pool.

Although each state's garnishment laws are different, many states have defined "earnings" that may be subject to garnishment in a manner that is similar to the Tennessee statute at issue in [Erlanger](#)

[Medical Center v. Strong](#). As such, the Tennessee Court of Appeals' decision and the U.S. Department of Labor guidance documents on which it relied may serve as strong persuasive authority in other jurisdictions. Nevertheless, hospitality employers should remain mindful that some states, including Colorado, expressly include tips in their definitions of "earnings" subject to garnishment.

When served with a garnishment order, hospitality employers should act promptly to determine their obligations under both state and federal law, particularly where the order involves a tipped employee. Garnishment orders often set out specific timelines for the employer to respond and comply. Failure to appropriately or timely respond to the order can put the employer on the hook for its employee's debt. To avoid such undesirable consequences and ensure that no improper deductions or withholdings are made from an employee's tips under applicable wage and hour laws, it is best practice to consult with an attorney immediately upon receipt of a garnishment order.

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