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**CALIFORNIA APPEALS COURT OVERTURNS
STARBUCKS BARISTAS' \$86 MILLION AWARD
OF TIP-BASED RESTITUTION**

This Newsletter is prepared by
Shook, Hardy & Bacon's National
Employment Litigation & Policy

GroupSM. Contributors to this issue:
[Kevin Smith](#) and [Brian Baggott](#)

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California's 4th District Court of Appeals has overturned an \$86 million award in a case brought on behalf of current and former Starbucks' baristas. Plaintiff Jou Chau claimed that Starbucks' policy of permitting shift supervisors to share in the tips customers leave in collective tip boxes violated Section 351 of the California Labor Code (and therefore also violated Section 17200 of the Business & Professions Code). The trial court had certified a class, conducted a bench trial and then awarded the \$86 million, plus interest, to the class as restitution under Section 17200.

Section 351 of the California Labor Code provides, in part:

No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for

The trial court ruled that forced sharing of collective tips violated this statute, finding that shift supervisors were "agents" because they had some ability to direct baristas' activities. This was so even though Starbucks demonstrated that shift supervisors, like baristas, are part-time employees who spend 90 to 95 percent of their working time performing the same work. Based on the finding that the shift supervisors were "agents," the lower court found that the shift supervisors simply could not share in the tips. The court relied on *Leighton v. Old Heidelberg, Ltd.*, 219 Cal. App. 3d 1062 (1990), and similar cases, which stand for the proposition that an employer cannot force an employee to turn his or her tips over to other employees.

The appeals court distinguished Starbucks' policy of equitably distributing collective tip-box proceeds from the prohibited practice of mandatory tip pooling. Under Starbucks' policy, tips left in a collective tip box are logically understood to be intended for all employees who provide service. Because shift supervisors serve customers and rotate such duties with baristas, the court determined that the shift supervisors were among those for whom the tips were left. In other words, by sharing the tips, the shift supervisors were not taking another employee's tips at all—they were merely receiving their equitable share of tips intended for them and other employees to share.

A copy of the court's decision can be downloaded from the court's Web site: <http://www.courtinfo.ca.gov/opinions/documents/D053491.PDF>.

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