

Q&A Document: Credit Card Processing Fees and Employee Tips

Q1: Under what circumstances can employers withhold credit card processing fees from employee tips?

A1: Delaware law, under Title 19, Chapter 9, Section 902(d), explicitly prohibits employers from withholding or diverting any portion of credit card processing fees from an employee's wages or gratuities. Gratuities are considered the sole property of the employee, and there are no state or federal laws that require such deductions. In addition, Title 19, Chapter 11, Section 1107 provides instances in which employers may withhold or divert portions of employees' wages but does not permit employers from diverting credit card processing fees from employees' wages, including gratuities. Any agreements to the contrary are void as a matter of public policy. This ensures employees receive their full earned tips without being penalized for credit card transaction costs.

Q2: Does this law apply to all restaurants or businesses with waitstaff in Delaware?

A2: Yes, the law applies to all employers operating in Delaware, including restaurants. No business is exempt from this requirement.

Q3: What should an employee do if they believe their employer is deducting credit card fees from their tips?

A3: Employees can file a complaint with the Delaware Department of Labor. Complaints can be submitted via email to wages@delaware.gov or by contacting the Office of Wage & Hour Enforcement directly at (302) 761-8200, option 3. Wage claim forms can be found at: <https://labor.delaware.gov/divisions/industrial-affairs/wage-hour/wage-payment/>. The DOL will investigate and take necessary action to enforce compliance.

Q4: What are the penalties for violating this law?

A4: Employers who violate this law may face penalties under Title 19, Chapter 9, Section 910 or Title 19, Chapter 11, Section 1112 of the Delaware Code. This includes potential fines, back wages owed to employees, and other remedies as deemed necessary by the Department of Labor.

Q5: Have any businesses been found in violation of this law?

A5: The DOL is actively monitoring compliance and expects all businesses, including restaurants and business that have tipped employees, to adhere to the law. We are in communication with these entities to ensure compliance.

Q6: Will employees who had fees deducted from their tips be reimbursed?

A6: Employers are strongly encouraged to make affected employees whole by reimbursing any deductions taken. The DOL will work to ensure employees receive the wages they are legally entitled to.

Q7: How can employers ensure compliance?

A7: Employers should review payroll practices, consult with legal counsel, and seek guidance from the DOL to ensure they are not violating labor laws. Proactive compliance is the best way to avoid penalties.

For more information or to report a violation, please contact the Delaware Department of Labor's Office of Wage & Hour Enforcement.