

Appeals court upholds limit on sharing of tips

By Sudhin Thanawala, AP

SAN FRANCISCO – Businesses cannot collect tips given to waiters, casino dealers or other service employees to share with support staff such as dishwashers even if the tipped employees are receiving minimum wage, a federal appeals court ruled Tuesday.

The 2-1 decision by the 9th U.S. Circuit Court of Appeals upheld a 2011 U.S. Labor Department rule.

The 9th Circuit said the rule was “reasonable” and consistent with Congress’ goal of ensuring tips stay with employees who receive them.

The court overturned district courts in Nevada and Oregon. The 9th Circuit ruling would largely apply to states that require workers to get the state minimum wage on top of any tips. Seven states fall into that category, according to the labor department’s Wage and Hour Division: Alaska, California, Minnesota, Montana, Nevada, Oregon and Washington.

It was not immediately clear what the impact would be on backend workers in those states.

The labor department has previously banned employers who use tips to fulfill their hourly minimum wage requirements from distributing those tips to employees who don’t regularly receive tips.

“The premise is the tip is never the employer’s,” said Reuel Schiller, a labor law professor at the University of California, Hastings in San Francisco. “The employer doesn’t have the power to take that from the waiter and give it to a

dishwasher because it's not the employer's money."

Supporters of the rule would say the employer should pay the dishwasher higher wages or charge customers to pay the dishwasher instead of having other staff subsidize the dishwasher's pay, Schiller said.

The 9th Circuit considered two lawsuits in its ruling – one brought on behalf of plaintiffs including restaurant and lodging associations in Washington, Oregon and Alaska and the other by two casino dealers against Wynn Las Vegas.

The casino dealers said Wynn was taking their tips to share with other employees. The restaurant and lodging associations said the federal rule would prevent back-end staff from sharing in tips.

Paul DeCamp, an attorney for the restaurant and lodging associations, said there was a decent chance one of the plaintiffs would appeal.

"The real world impact of this sort of regulation that the Department of Labor has issued is important for people to understand," DeCamp said. "The people who are hurt most by the 9th Circuit ruling are the people in the kitchen, the cooks, the dishwashers, the prep cooks and so on."

Michael Weaver, a spokesman for Wynn Resorts, said Wynn was studying the ruling to decide its next steps.