

June 5, 2009

## E-Verify Delayed Again

For the fourth time, the government has postponed implementation of the rule requiring federal contractors to use the U.S. Citizenship and Immigration Services (USCIS) E-Verify system to confirm employment eligibility for new hires and certain current employees. Now, the E-Verify rule is slated to take effect on September 8, 2009, pushed back from June 30, 2009. Miller Law Group will keep you posted about further developments. Information about E-Verify is available on the USCIS website.

## Starbucks \$105 Million Tip-Pooling Verdict Overturned

A California Court of Appeal on Tuesday threw out a \$105 million verdict in a tip-pooling class action, *Chau v. Starbucks Corp.*, ruling that Starbucks's policy of permitting "shift supervisors" to share in gratuities left in collective tip boxes by customers is permissible. Shift supervisors regularly perform all the duties of Starbucks "baristas" – the counter employees who make coffee drinks and operate the cash register – and also have some limited supervisory tasks.

The lawsuit made headlines last year when a San Diego trial court found that including shift supervisors in the group of employees among whom tips were shared violated Cal. Labor Code § 351, which prohibits employers and their agents from "taking" any part of a gratuity left for employees.

The Fourth District Court of Appeal, however, has now ruled that Starbucks did not violate section 351 by requiring an equitable distribution among the service team of customer tips left in a collective tip box for the entire service team, including shift supervisors. Regardless of whether a shift supervisor qualifies as an agent, section 351 is not implicated, said the court, because the shift supervisor "keeps only his or her earned portion of the gratuity and does not 'take' any portion of the tip intended for services by the barista or baristas."

Employers should continue to use caution with respect to tip-pooling policies and practices. This ruling – which is likely to be appealed to the California Supreme Court – only involved sharing tips left collectively for a service team among the members of that team, and it does not authorize tip-sharing policies that give managers and agents a cut of tips left for a specific service employee, such as for providing direct table service.

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Miller Law Group is the leading women-owned employment law firm in California, specializing in representing management in all facets of employment litigation and strategic advice. If you have questions or would like further information about these new developments, please contact Michele Ballard Miller ([mbm@millerlawgroup.com](mailto:mbm@millerlawgroup.com)) or Carolyn Rashby ([cr@millerlawgroup.com](mailto:cr@millerlawgroup.com)), or call 415-464-4300.

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