

13 NCAC 12 .0303 TIPS AND TIP CREDITS

(a) Tips are not wages. Tips may be counted toward wages only to the extent set forth in Paragraphs (e), (f) and (g) of this Rule.

(b) A tip shall not include a service charge which the employer requires the customer to pay, no matter what the charge is labeled.

(c) Tips belong to the employee for whom they were left by the customer. Employees and employers may not agree that the employee will surrender tips to the employer. However, if there is a tip pooling arrangement under 95-25.3(f), the employee may be required to surrender tips received for distribution in accord with the tip pooling arrangement.

(d) If a customer pays by credit, charge or debit card and includes a tip for an employee:

- (1) the tips so charged accrue to the employee at the time of the charge. The employer shall pay the employee the charged tip no later than the payday for the pay period in which the customer signs the charge; and
- (2) employers may retain from the tips an amount up to or equal to the pro rata portion of the fee charged by the card issuing company which is attributable to the tips. When employers make such retentions, they do so without violating G.S. 95-25.6 and without becoming disqualified from claiming the tip credit on the charged tip.

(e) In order for an employer to claim a tip credit toward the minimum wage:

- (1) the employee must be a tipped employee within the meaning of the Act;
- (2) the employer shall notify the employee in accordance with G.S. 95-25.13 if the employer intends to claim the tip credit; and
- (3) the employee must retain all tips, subject to any valid tip pooling arrangement as described in Paragraph (h) of this Rule.

(f) The following records shall be kept by the employer for each employee for whom a tip credit is claimed:

- (1) Complete and accurate records of the amount of tips received for each workweek as such tips are certified by the employee monthly or for each pay period. The employee certification is the employee's signature or initials on the employer's records. Certification shall occur either monthly or for each pay period. The sole exception to this requirement is set forth in Paragraph (g) of this Rule. An employee's acceptance of wages from the employer shall not constitute certification by the employee of tips received;
- (2) The amount claimed by the employer as tip credit for each employee for each workweek;
- (3) For each employee participating in a tip pool, for each workweek, the amount of contributions to the tip pool; and
- (4) For each employee participating in a tip pool, for each workweek, the amount received from the tip pool.

(g) If the employee refuses to certify or to certify accurately and completely the amount of tips received, a tip credit may be claimed if the employer:

- (1) meets the requirements of Paragraphs (e)(3) and (f) of this Rule; and
- (2) can demonstrate with written documentation for each workweek for which a credit is claimed:
 - (A) that the tipped employee certifies having received tips in the amount for which the credit is taken, or
 - (B) that a similarly situated tipped employee received tips in the amount for which the credit is taken, or
 - (C) by other method which reliably establishes that the tipped employee regularly receives tips in the amount for which the credit is taken.

(h) "Tip pooling" as used in G.S. 95-25.3(f) is an arrangement in which all or a part of the tips of the contributing employees are combined into a common pool and then divided among the participating employees according to a pre-determined formula. An employee's share of a tip pool is that portion of the total amount in the pool which the employee receives. A tip pooling arrangement is valid under G.S. 95-25.3(f) when:

- (1) the contributing employees are notified of the arrangement before the pay period in which it will be used;
- (2) the share of each contributing employee is at least 85% of the employee's tips before the employee contributes to the tip pool; and
- (3) only employees who customarily and regularly receive tips receive a share from the pool.

The requirement of 95-25.6 that the employer pay "tips accruing to the employee" shall be satisfied if the employee in a tip pooling arrangement receives 85% of the employee's actual tips before pooling or the employee's share received from

the pool, whichever is greater. By complying with Subparagraph (h)(2) of this Rule, the employer has also satisfied the provision of G.S. 95-25.3(f) requiring the employer to allow the tipped employee to retain all tips.

History Note: Authority G.S. 95-25.3; 95-25.6; 95-25.13; 95-25.15; 95-25.19;
Eff. November 1, 1980;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.