



## **Tip Pooling by Restaurants Gets a Judicial Thumbs Up**

November, 2010

The Ninth Circuit Court of Appeals in *Cumbie v. Woody Woo, Inc.*, 596 F.3d 577 (9th Cir 2010) recently affirmed a lower court decision that allows restaurants to require waiters and waitresses to participate in a tip pooling arrangement. Tip pooling is designed to distribute tips to those restaurant workers, such as kitchen staff, who do not ordinarily receive tips. The Ninth Circuit held that such a requirement is not in violation of the Fair Labor Standards Act (FLSA) of 1938.

In *Cumbie*, a waitress objected to a tip pooling arrangement instituted by her employer and brought a lawsuit alleging that the arrangement violated the minimum-wage provisions of the FLSA. Defendant Woody Woo argued that Cumbie might be correct in her reading of the FLSA if, and only if, the employer in question took a "tip credit" toward its minimum-wage obligation. Woody Woo, however, did not claim a "tip credit" and, therefore, asserted its tip pooling arrangement was permissible so long as it paid her the minimum wage, which it did.

The District Court agreed with Woody Woo and ruled in its favor. The case went up to the Ninth Circuit where the District Court's decision was upheld. The Ninth Circuit decision provides guidance and certainty to the question as to whether tip pooling arrangements are permissible and under what conditions. This is important to our clients in the Northwest, and particularly to our Oregon clients, given that in 2011 the minimum wage will increase 10 cents to \$8.50 per hour.