CANNABIS EMPLOYER ALERT

TIP POOLING: KNOW WHERE YOU STAND BEFORE A PLAINTIFFS' FIRM FINDS OUT FOR YOU

7 things every cannabis dispensary employer should know

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1. Under federal law (FLSA), managers and supervisors cannot participate in a tip pool. Violations carry a 2–3 year lookback, possible liquidated (double) damages, and attorney fee-shifting to prevailing plaintiffs — with state law often adding further penalties and a longer lookback.
2. Leads, Shift Supervisors, and Agents-in-Charge typically carry some supervisory responsibilities — like opening and closing the store. Whether these responsibilities are enough to preclude participation in the tip pool is the legal question.
3. Titles don't control; actual job duties do, but given the nature of these "hybrid" roles, employers are exposed to expensive class and collective action wage and hour litigation.
4. Illinois dispensaries are particularly attractive targets: the state's cannabis regulations say an Agent-in-Charge "manages" the dispensary, and the state wage law reaches back 10 years with 5% monthly penalties. That said, this is a national trend — suits have also been filed in CA, MD, MI, MA, OH, NM, NV & CO.
5. Fees can dwarf recoveries: in one case that settled, 350 employees split $504 each (plus $10,000 to 2 lead plaintiffs) while plaintiffs' counsel collected $149,000 in attorneys' fees.
6. Attorney fee-shifting cuts one way. If a plaintiff wins, the employer pays their attorneys' fees too — but the employer doesn't recover its own fees if it wins. That's one of the reasons these cases settle.
7. Any settlement must be approved by the court, and must also include statutory penalties and attorneys' fees for plaintiffs' counsel.

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