

THE ORANGE COUNTY

REGISTER

| **MONDAY**, Oct. 10, 2005 |

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BUSINESS MONDAY

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Circumstances dictate if tip pools are OK

Q. I am a waitress at a very big, well-known restaurant here in Southern California and have worked there for a very long time. Now they are talking about changing the way we do things after doing the same for more than 70 years. One thing they will implement is having expeditors deliver our food to the tables and we will have to tip them. We are already taxed on 8 percent of our sales every day to the expeditors. Can a restaurant do that? They are also saying they will take it out of our paychecks every week and do this through payroll so all can be taxed. Is this legal?

A. "First, without knowing all the details of your work situation, I strongly recommend that you personally consult with an at-

torney or accountant so as to provide you with all the appropriate advice," says Nicole Whyte, founding partner of Newport Beach-based law firm Bremer Whyte Brown & O'Meara.

"Second, in California employees are allowed to voluntarily agree among themselves to pool or share their tips. Only under certain circumstances may the employer require tip sharing or tip pooling. The reason is to avoid a situation where the first employee who reaches the table gets the tip, leaving the other employees who service the table with nothing.

"In order to effectively answer your question regarding payroll and tax on tips, any pro-

fessional will require more detail about the specific proposal and the issues related to your work environment. Most important - if a revised tip and paycheck policy is proposed to go into effect, make sure that the new policy is written down in the employee handbook.

"Keep in mind that the Labor Code prohibits employers from using tips as a credit against wages owed by the employer."

IF YOU HAVE QUESTIONS:

Write: Work Q&A, Business Monday

The Orange County Register

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Letters cannot be individually answered.