

**BLOGS**

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Employees Found to Have a Private Right of Action under Minnesota Tip Pooling Law

As [previously reported](#), a Hennepin County district court judge ruled earlier this fall in a class action case against *Surly Brewing* that an employee tip-pooling agreement made with employer coercion or participation violates Minnesota's wage and hour law. Now, the Minnesota Supreme Court [has found](#) that Minnesota's wage and hour law expressly permits a private cause of action for an employee who is discharged for refusing to share gratuities.

The Minnesota Supreme Court's ruling was issued this week in *Burt v. Rackner, Inc. d/b/a/ Bunnys Bar & Grill*. The plaintiff, Todd Burt, alleged that he was told by his restaurant employer that to give more of his tips to the bussers, and that there would be consequences if that did not happen. After refusing to follow the directive, Burt was terminated. Burt sued, claiming that his termination violated the tip-sharing provision of the [Minnesota wage and hour law](#). More specifically, Minnesota law prohibits an employer from requiring an employee to contribute or share a gratuity received by the employee or to contribute any or all of the gratuity to a fund or pool.

Before Burt's case made its way to the Minnesota Supreme Court, a state district court judge dismissed the case on grounds that there was no private right of action under the state law for wrongful discharge for refusing to share tips. The Minnesota Court of Appeals reversed, holding that the state law unambiguously provides an employee the right to bring such a civil action and seek appropriate damages. The Minnesota Supreme Court granted the employers petition for review and affirmed the Minnesota Court of Appeals.

Before the Minnesota Supreme Court, Burt's employer argued that Minnesota law expressly forbids an employer from requiring tip sharing, but does not expressly prohibit an employer from terminating an employee who refuses to contribute or share tips. The employer also argued that the state law could only be violated if an employer's unlawful threat actually compelled compliance by the employee. The Minnesota Supreme Court rejected these arguments, holding that the state law's language creates an obligation on an employer not to require or coerce tip sharing and does not require employee compliance with wrongful coercion for a legal violation to occur.

The employer also argued that Burt could not bring suit, because the Minnesota wage and hour law allegedly does not expressly provide a cause of action for

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wrongful discharge arising out of an employees refusal to share tips. The Court rejected this argument, finding that the statutes express prohibition on forced tip sharing coupled with other statutory language providing for a broad right action for any violation of the state wage and hour law, expressly authorizes an employee to sue for wrongful discharge arising out of a refusal to share tips and allows the recovery of *any* damages or appropriate relief, including back pay.

The *Rackner* ruling and the earlier *Surly* ruling should prompt employers with tipped employees to review their tipping practices to ensure legal compliance and avoid expensive legal claims.