



# Tips, Tips, Everywhere?! Navigating the New Landscape of Tipping Trends and Legal Traps

August 6, 2025





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**MICHAEL WORTH**

VP of Sales  
ComplianceHR

# Compliance **HR**

**Simplify the complexity of employment law with our suite of self-service HR compliance applications.**



## **PolicySmart™**

Effortlessly create and maintain an up-to-date and legally compliant employee handbook



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Immediately mitigate your risk of independent contractor misclassification



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Quickly and compliantly determine whether an employee is exempt or non-exempt

# Start With the Right Information – No Googling or Guessing

## CALIFORNIA

Table 2. Federal Documents to Provide at Hire	
Category	Notes
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim. <sup>203</sup>
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees. <sup>204</sup>
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements. <sup>205</sup>

### 2.1(b) State Guidelines on Hire Documentation

Table 3 lists the documents that must be provided at the time of hire under state law. Local documentation requirements may be discussed in the table below or in other sections, but the local ordinance coverage is not comprehensive.

Table 3. State Documents to Provide at Hire	
Category	Notes

### 3.3(a)(i) Federal Minimum Wage Obligations

The current federal minimum wage is \$7.25 per hour for most nonexempt employees.<sup>487</sup>

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to \$5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is \$2.13 per hour. Note that if an employee does not make \$5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of \$7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.<sup>488</sup>

<sup>485</sup> CAL. CIV. CODE § 1798.100.

<sup>486</sup> 29 U.S.C. § 218(a).

<sup>487</sup> 29 U.S.C. § 206.

<sup>488</sup> 29 U.S.C. §§ 203, 206.

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## CALIFORNIA

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.<sup>489</sup>

### 3.3(a)(ii) Federal Overtime Obligations

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked

# Accurate Information Directly from Littler

## MINIMUM WAGE REPORT

### REPORT OVERVIEW

This report provides the current and future minimum wage requirements for non-exempt employees, along with basic information about tip credits, for locations with a population of at least 100,000 people.

Certain exceptions and industry-specific minimum wage standards are not included in this report.

While using this report, remember that employees must be paid the highest applicable federal, state, or local minimum wage.

[More Information](#)

Requirements

Timeline

### TIMELINE

LEGEND ■ Minimum Wage ■ Tip Credit

September 2025	FLORIDA FLORIDA
October 2025	DISTRICT OF COLUMBIA
November 2025	
December 2025	
January 2026	ARIZONA ARIZONA - FLAGSTAFF ARIZONA - FLAGSTAFF ARIZONA - TUCSON ARIZONA - TUCSON CALIFORNIA CALIFORNIA - BELMONT CALIFORNIA - BURLINGAME CALIFORNIA - CITY OF WEST HOLLYWOOD CALIFORNIA - CUPERTINO CALIFORNIA - DALY CITY CALIFORNIA - EAST PALO ALTO CALIFORNIA - EL CERRITO CALIFORNIA - FOSTER CITY CALIFORNIA - HALF MOON BAY CALIFORNIA - HAYWARD CALIFORNIA - LOS ALTOS CALIFORNIA - MENLO PARK CALIFORNIA - MOUNTAIN VIEW CALIFORNIA - NOVATO CALIFORNIA - OAKLAND CALIFORNIA - PALO ALTO CALIFORNIA - PETALUMA CALIFORNIA - REDWOOD CITY CALIFORNIA - RICHMOND CALIFORNIA - SAN CARLOS CALIFORNIA - SAN DIEGO CALIFORNIA - SAN JOSE CALIFORNIA - SAN MATEO CALIFORNIA - SAN MATEO COUNTY CALIFORNIA - SANTA CLARA CALIFORNIA - SANTA ROSA CALIFORNIA - SONOMA CALIFORNIA - SOUTH SAN FRANCISCO CALIFORNIA - SUNNYVALE COLORADO COLORADO - BOULDER COLORADO - BOULDER COLORADO - BOULDER COUNTY COLORADO - BOULDER COUNTY COLORADO - DENVER COLORADO - DENVER COLORADO - EDGEMONT COLORADO - EDGEMONT CONNECTICUT CONNECTICUT HAWAII HAWAII MAINE MAINE MAINE - PORTLAND

### Arizona - Tucson (01/01/2026)

#### Are tip credits permitted?

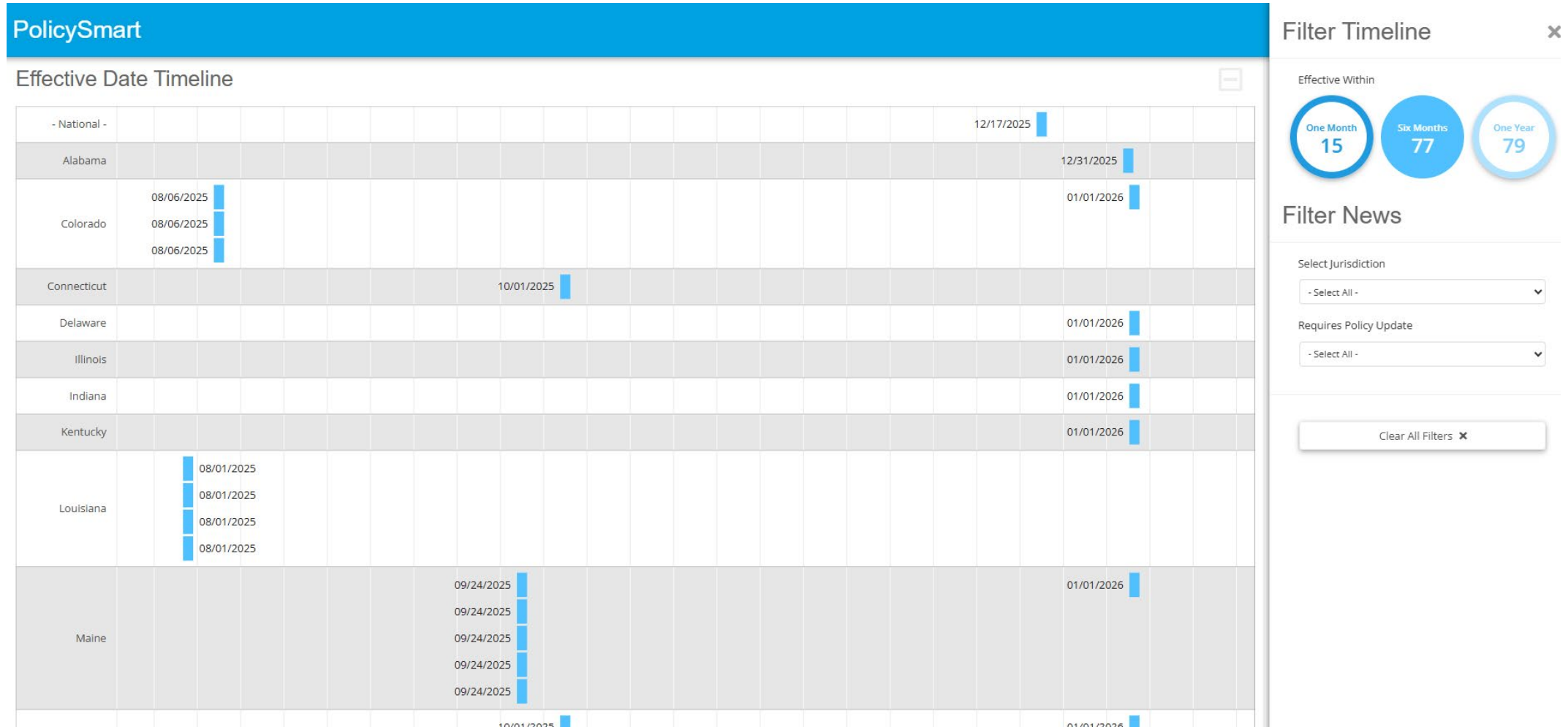
Tip credits are permitted in Tucson, Arizona, and are expected to change on this date. The required minimum cash wage is yet to be announced and maximum tip credit will be \$3.00 (for tips actually received).

A tip credit is permissible for any employee who customarily and regularly receives more than \$30 per week in tips, has been informed by the employer in writing about the city's tip requirements, retains all tips received, and for whom wages plus tips are not less than the minimum wage.

CLOSE



# Proactive Effective Date Timeline



# Bi-monthly News Updates

## PolicySmart

### Policy News and Updates

Click on the links below to access summaries of legal developments added to PolicySmart within the last 30 days:

#### Arizona

- City of Tempe, Arizona Enacts Heat Safety Standards for City Contractors [View Post](#)

#### Colorado

- Amended Colorado Paid Family and Medical Leave Insurance (FAMLI) Law Addresses Neonatal Intensive Care, Slightly Low
- Colorado Clarifies Right to Reproductive Decisions [View Post](#)
- Colorado Enacts Increased Wage Act Penalties and Enforcement, Allows Local Governments to Increase Tip Credit [View Po](#)
- Colorado Amends Law on Child Support Withholding [View Post](#)

#### Connecticut

- Connecticut Amends Consumer Data Privacy and Online Monitoring Act [View Post](#)
- Connecticut Amends Retirement Security Program [View Post](#)
- Connecticut Amends Anti-SLAPP Statute, Extending Protections to Include Communication Concerning Alleged Commission

#### Delaware

- Delaware Appropriates Funds for Administration of Healthy Delaware Families Act [View Post](#)

#### District of Columbia

- District of Columbia Amends Human Rights Act, Including Definition of Sexual Harassment [View Post](#)

#### Hawaii

- Hawaii Amends Retirement Savings Act [View Post](#)
- Hawaii Expands Eligibility for Unemployment Benefits [View Post](#)

#### Illinois

- Illinois Amends Equal Pay Act, Expanding Reporting Requirements [View Post](#)

#### Iowa

- Iowa Amends Law on Notification of Positive Drug Tests [View Post](#)

### Developments Taking Effect This Month

To help keep you on track, below is a reminder of previously enacted laws taking effect this month. Click on the links to access the PolicySmart summary and any policy related template materials.

#### Alaska

- Alaska Ballot Measure Includes Provisions on Mandatory Employer Meetings (effective Jul 01, 2025) [View Post](#)
- A Majority of Alaskans Appear to Have Approved a Paid Sick Leave Ballot Measure--Now Includes Sample Policy (effective Jul 01, 2025) [View Post](#)

#### Arizona

- City of Tempe, Arizona Enacts Heat Safety Standards for City Contractors (effective Jul 09, 2025) [View Post](#)

#### Arkansas

- Arkansas Amends Independent Contractor Test (effective Jul 12, 2025) [View Post](#)
- New Arkansas Law Allows Employers to Disclose Substantiated Allegations of Sexual Abuse or Harassment to Prospective Employers (effective Jul 12, 2025) [View Post](#)
- Arkansas Passes Law Allowing Private Property Owners to Ban Emotional Support Animals (effective Jul 12, 2025) [View Post](#)
- New Arkansas Law Requires Veterans' Benefits and Services Poster (effective Jul 12, 2025) [View Post](#)

#### California

- Los Angeles County Enacts Predictive Scheduling Ordinance--Now Includes Sample Policy (effective Jul 01, 2025) [View Post](#)

#### Colorado

- Colorado Expands Privacy Act Protections for Biometric Data--Includes Written Policy Requirement (effective Jul 01, 2025) [View Post](#)

#### Connecticut

- Connecticut Amends Retirement Security Program (effective Jul 01, 2025) [View Post](#)

#### Georgia

- Georgia Phases Out Subminimum Wage for Individuals with Disabilities (effective Jul 01, 2025) [View Post](#)

#### Hawaii

- Hawaii Amends Retirement Savings Act (effective Jul 01, 2025) [View Post](#)
- Hawaii Expands Eligibility for Unemployment Benefits (effective Jul 01, 2025) [View Post](#)

#### Idaho

- Idaho Expands Law Prohibiting Required Vaccinations (effective Jul 01, 2025) [View Post](#)

# Sign Up for a Demo

## ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

### Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit our website: Compliancehr.com
3. Email our team at [demo@compliancehr.com](mailto:demo@compliancehr.com)

### Benefits of a custom demo:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

#### Resources

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[State-by-State CLE Guide](#)

[BeaconLive - How to Access Certificates](#)



# Presented By



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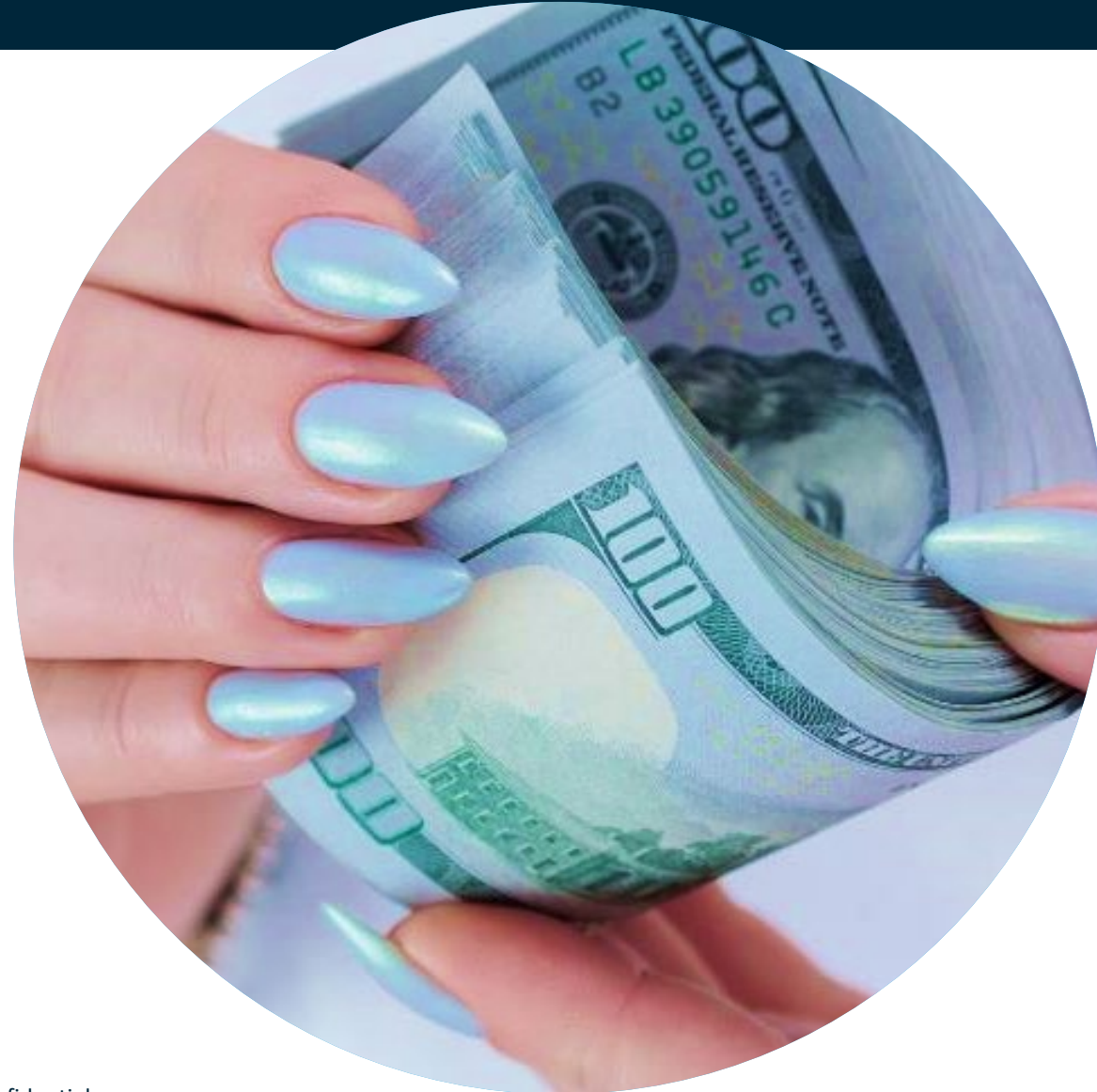
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# Where Did It Start?



# Where Did It Start?

- Traditional table service restaurant
- Nail salon
- Valet parking
- Taxi / rideshare
- Hotel room cleaning staff



# Where Has It Gone?



# Where Has It Gone?

- Fast casual restaurant with order at counter or via tablet / QR code
- Quick serve restaurant
- Phone / email / app order
- Retail
- Liquor store
- Self-serve market / airport kiosk
- Grocery store
- Pet supply website
- Event venue merchandise stand
- Event venue lockers
- School fundraiser
- Pet groomer
- HVAC technician
- Health care provider
- What's next!?





# Why Should We Care?



# Why Should We Care?

- Who is the “recipient” or “owner” of tips?
- Under what circumstances can you take a tip credit?
- Can you mandate sharing of tips?
- How much in tips can you require to be shared?
- Who can be a recipient from a tip pool?
- What alternatives are there?
- What are the potential penalties?

# Who Is the Tip Recipient or Owner?



# Who Is the Tip Recipient or Owner?

- **FLSA:** Employee who “receives” tips.
- **California:** “Every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for.”
- **Colorado:** “Gratuities are the employee's sole property.”
- **Illinois:** “Gratuities to employees are their property that employers cannot keep.”
- **Maine:** “Tips received by a service employee become the employee's property and cannot be shared with the employer.”
- **Michigan:** “Gratuities remain property of the employee who receives them.”
- **New Jersey:** “Tips are the property of the employee.”
- **North Carolina:** “Tips belong to the employee for whom they were left by the customer.”
- **Rhode Island:** “A tip is the sole property of the tipped employee.”
- **Wyoming:** “Tips and gratuities received by an employee or employees shall be the sole property of such employee or employees.”

# Who Is the Tip Recipient or Owner?

- In non-traditional settings, who is the recipient?
  - Employee closest to POS?
  - Employee who answered the phone?
  - Robot that took the order?





# Under What Circumstances Can You Take a Tip Credit Under **Federal** Law?



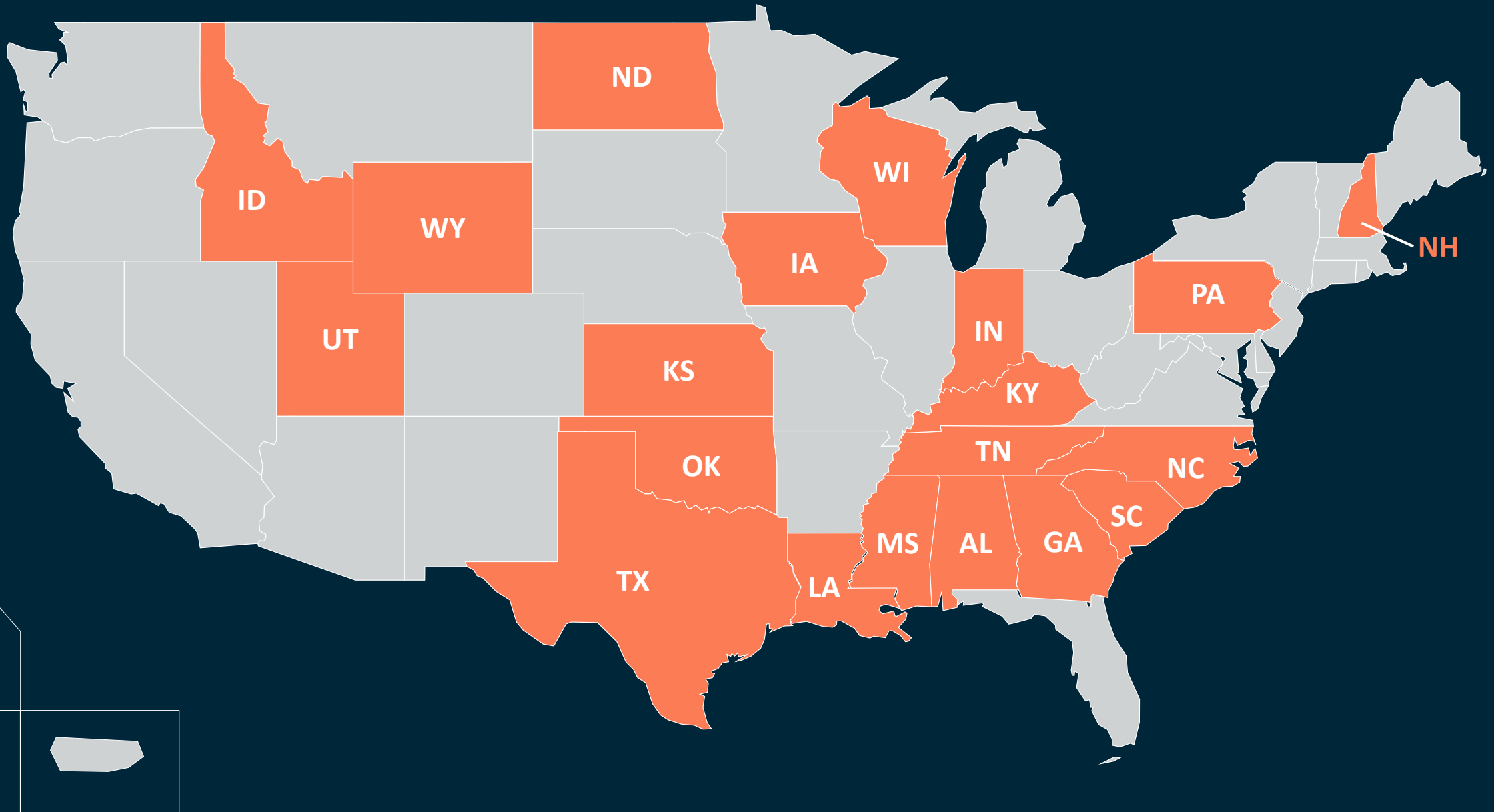
# Under What Circumstances Can You Take a Tip Credit Under Federal Law?

- What is the tip credit and why is it there?
- Employees who customarily and regularly receive more than \$30 a month in tips
  - What about the 80/20 Rule?
    - Generally required at least 80% “tip producing” work; up to 20% “directly supporting” work; and no “unrelated” work
    - Invalidated by Fifth Circuit in August 2024, later removed from DOL regs and guidance
    - “Dual Jobs” regulation remains, but DOL is considering rescission
    - Unclear what vestiges of 80/20 remain

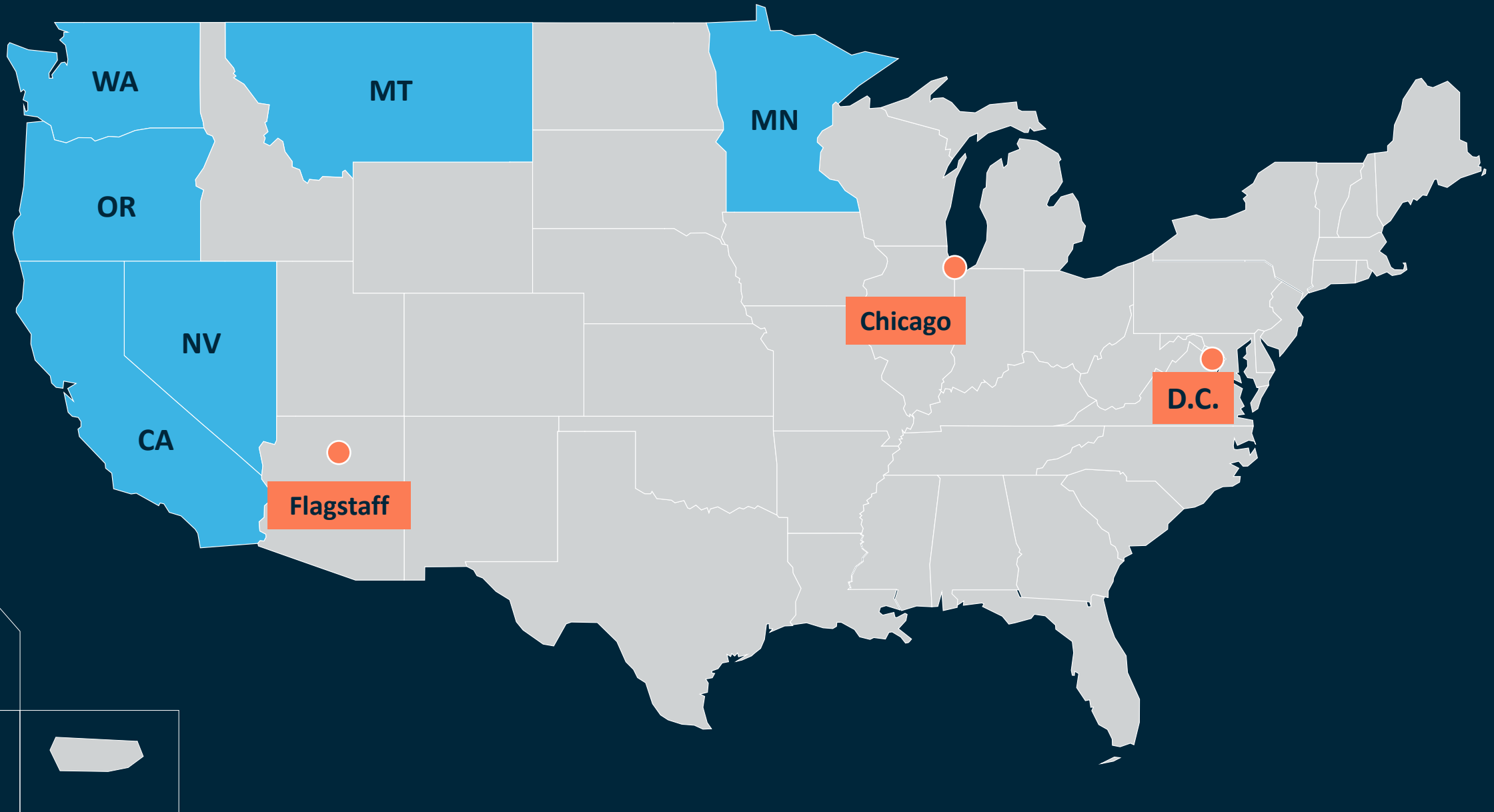
# Under What Circumstances Can You Take a Tip Credit Under **State** Law?



# States in Which FLSA Controls

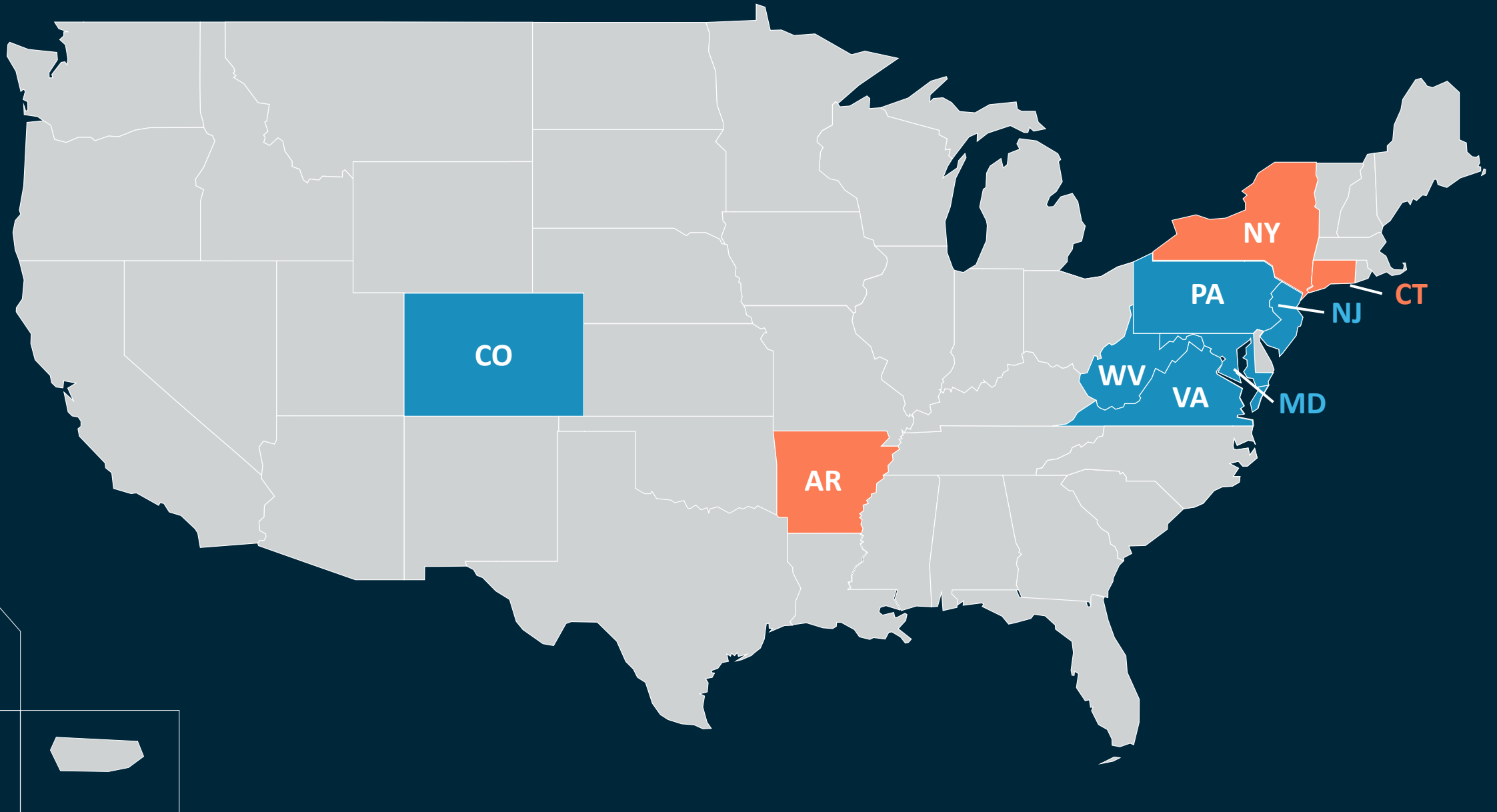


# States Banning Tip Credit or Localities Phasing It Out

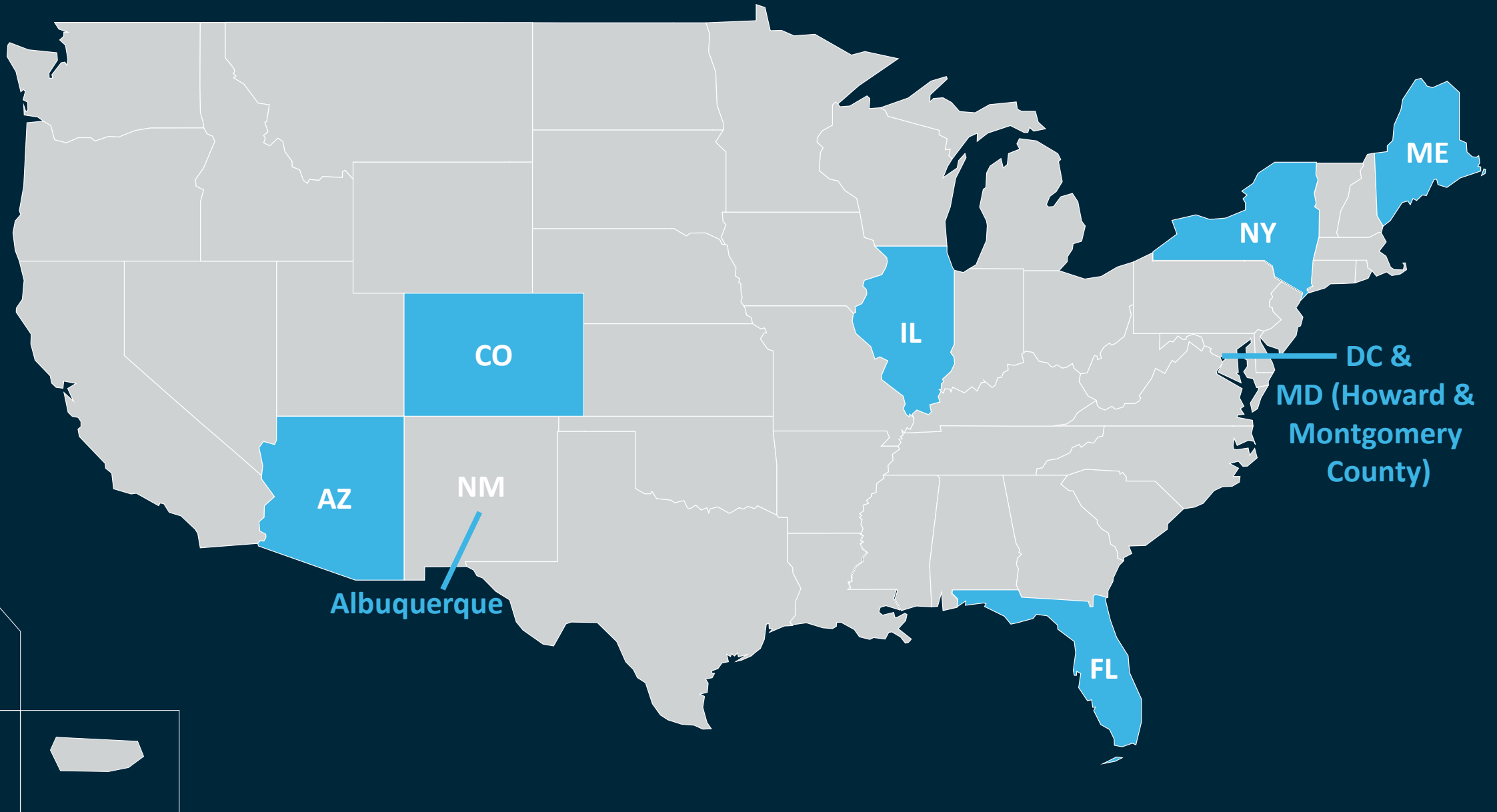




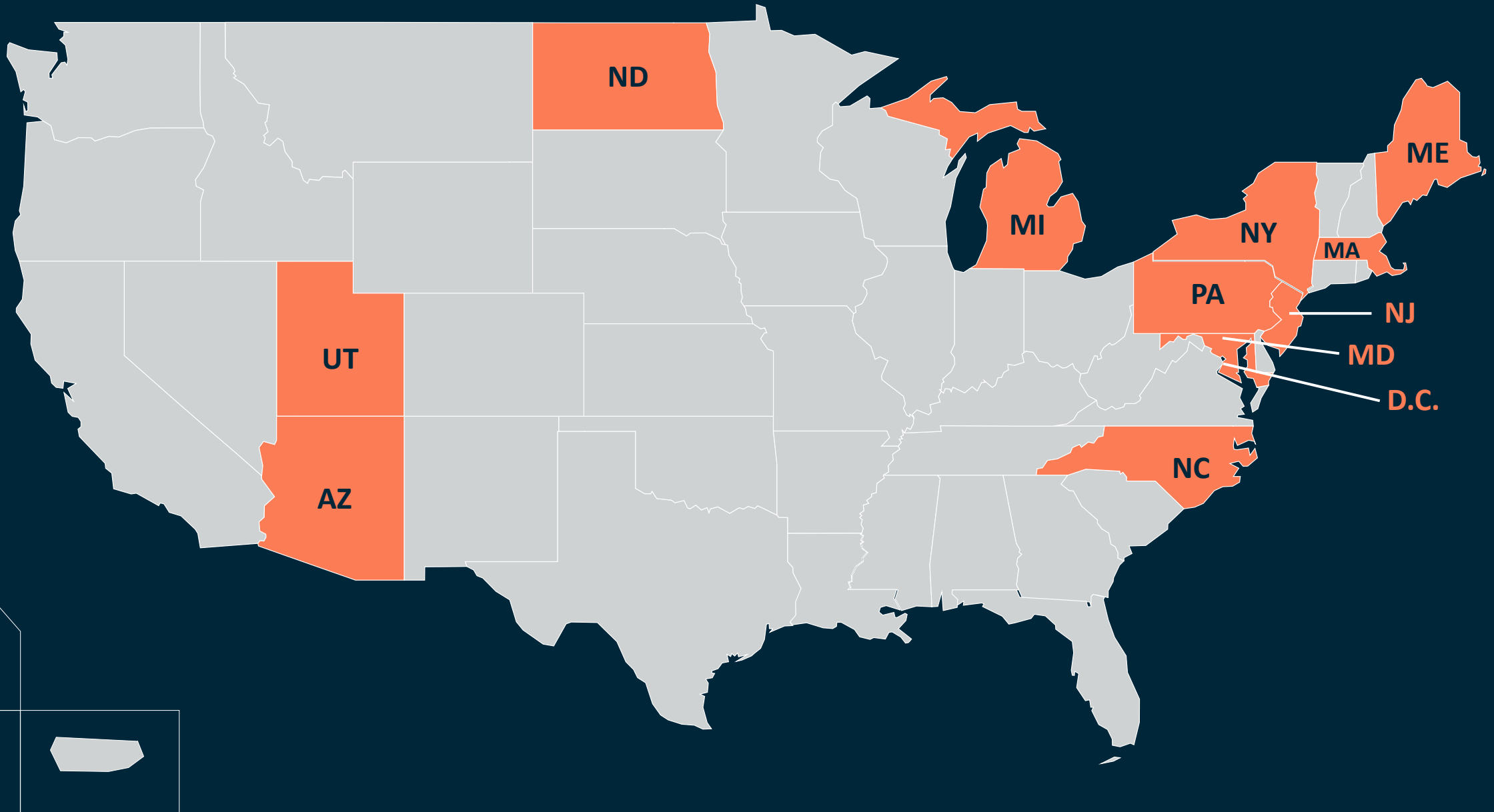
# States With Their Own 80/20 Rule (or Other Limitations)



# States & Localities With Minimum Cash Wage > \$7.25



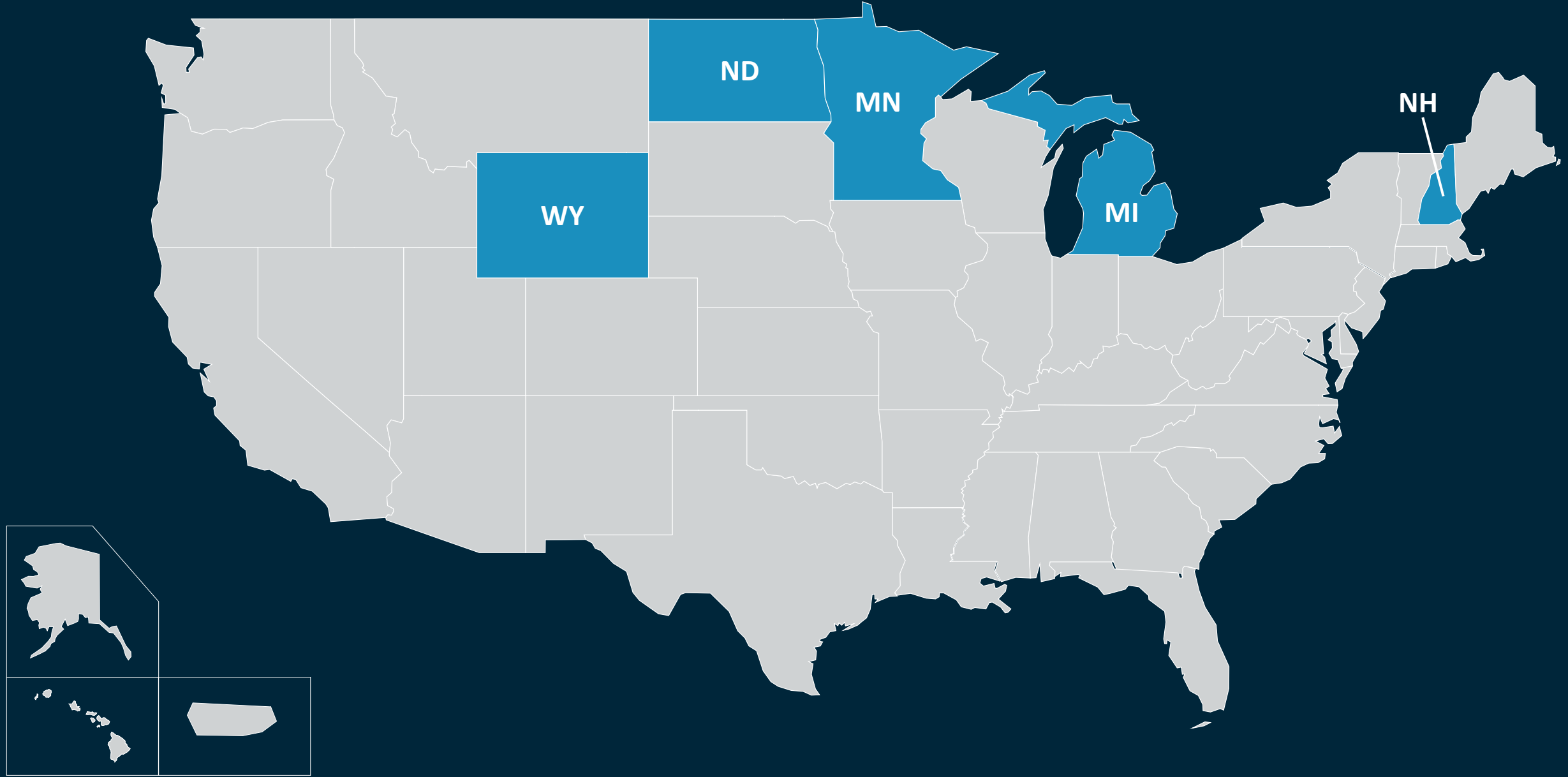
# States With Their Own Tip Credit Notice Requirements



# Where Can You Require Sharing of Tips?



# States That Prohibit Mandatory Tip Pooling





# Restrictions on Amount of Shared Tips



# Restrictions on Amount of Shared Tips

- **FLSA:** Old 15% limitation rescinded
- **States**
  - **California:** Fair and reasonable?
  - **Delaware:** 15%
  - **Indiana:** Fair and reasonable?
  - **New York:** Customary and reasonable
  - **North Carolina:** 15%
  - **Virginia:** 15%

# Who Can Receive Tips from Tip Pools?



# Who Can Receive Tips from a Mandatory Tip Pool Under **Federal** Law?

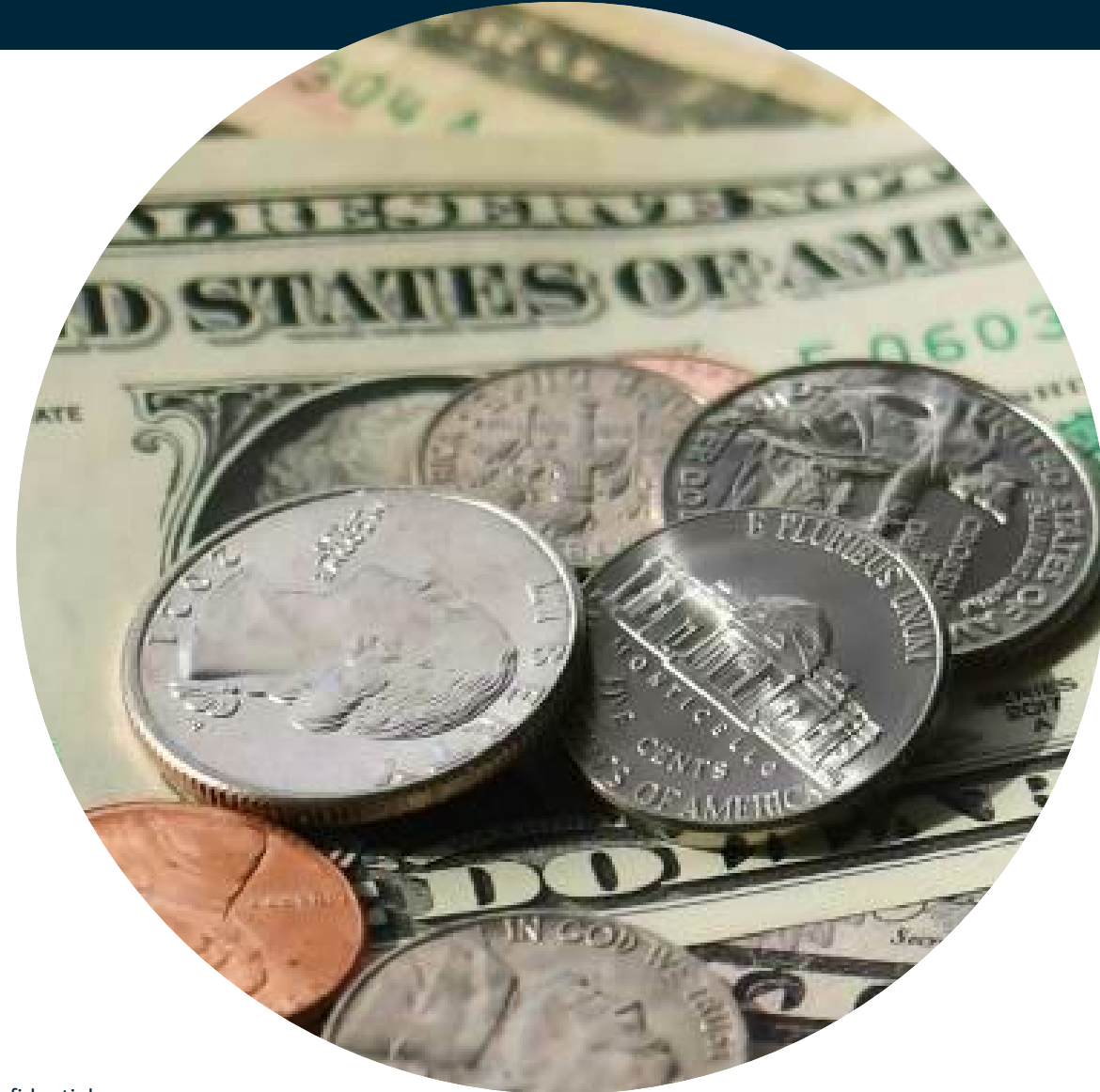
- **Tip Credit:** Only employees who customarily & regularly receive tips
  - In non-traditional settings, does anyone qualify?
- **No Tip Credit:** Any non-manager



# Who Can Receive Tips from a Mandatory Tip Pool Under **State** Law?

## States that Restrict Tip Pooling More than FLSA:

- **California:** Ban on “agents”
- **Colorado:** Customer notice requirement
- **Delaware:** Restricted to those involved in direct personal service to same customer
- **Massachusetts:** Limitation to servers, bussers, bartenders
- **Minnesota:** “Shared gratuities” rule
- **New York:** Restriction to employees with 80% time serving food / beverages



# What Alternatives Are There To Tip Pooling?



# What Alternatives Are There to Tip Pooling?

## Service Charge:

- **Non-negotiable fee added to guest check**
  - Lines blurred if permit customer discretion
- **Generally regarded as receipts of company, not tip**
- **Company generally can keep or distribute as it sees fit**
- **If passed through to employees = wages, not tips**
  - May be taxed like bonus
  - Must be included in overtime calculation

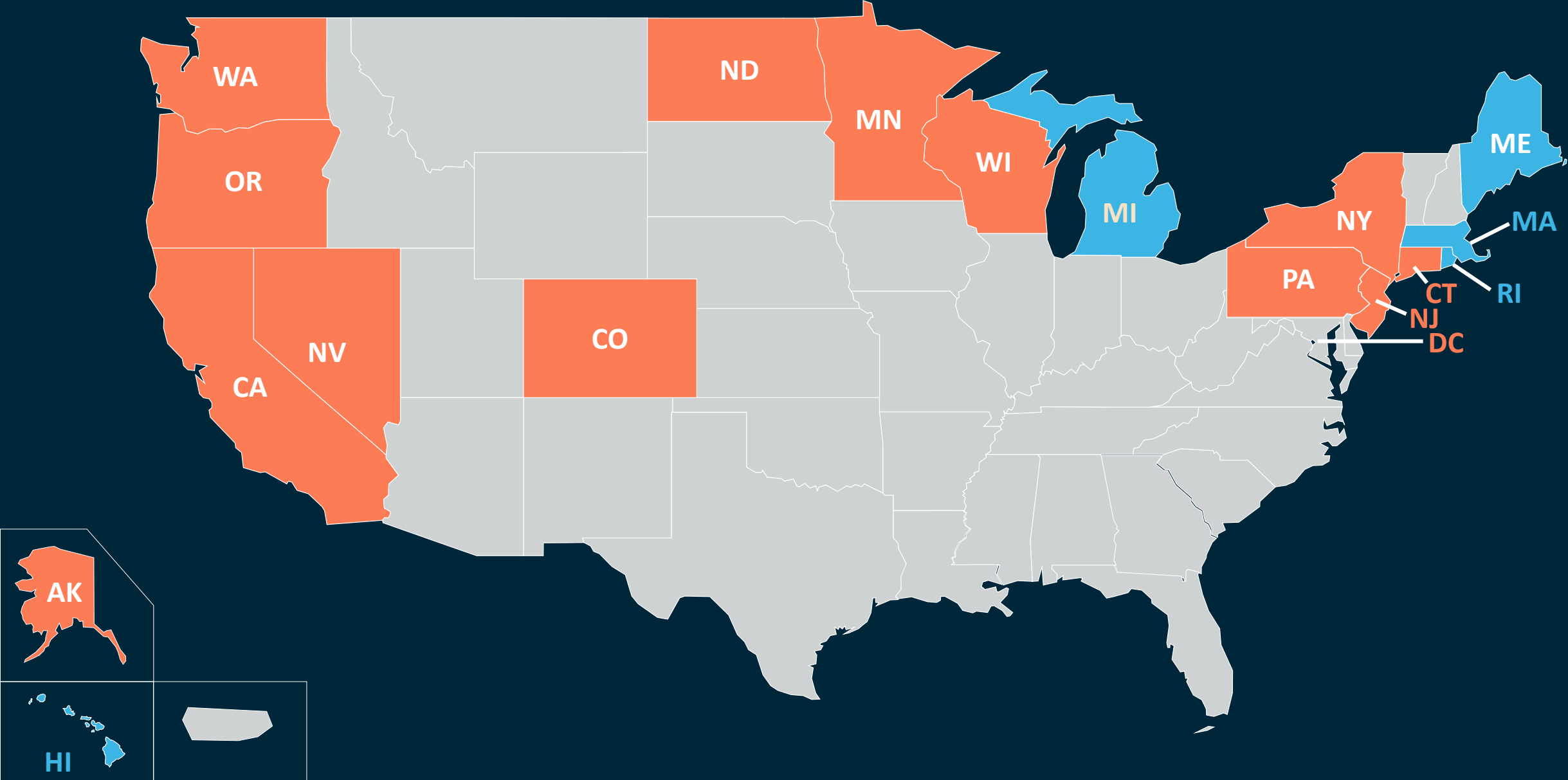
# What Alternatives Are There To Tip Pooling?

## FLSA 7(i) Exemption

- Retail or service establishment
- Regular rate at least 1.5 times minimum wage (\$10.88)
- More than half of compensation from commissions on goods or services
  - Extra charge added to guest check = commission



# States That Do Not Allow 7(i) Exemption or Present Potential Challenges



# What Are the Potential Penalties?



# What Are the Potential Penalties?

- **Disgorgement of Tips Improperly Shared**
  - Reality: requires payment equal to misdirected tips, not recoupment
- **Loss of Tip Credit**
  - Tip credit amount times ALL hours worked
- **Liquidated (Double) Damages**
  - Some states treble or more (D.C., Idaho, Illinois, Massachusetts)
- **Up to 3-Year Recovery Period (More in Some States)**

# What Are the Potential Penalties?

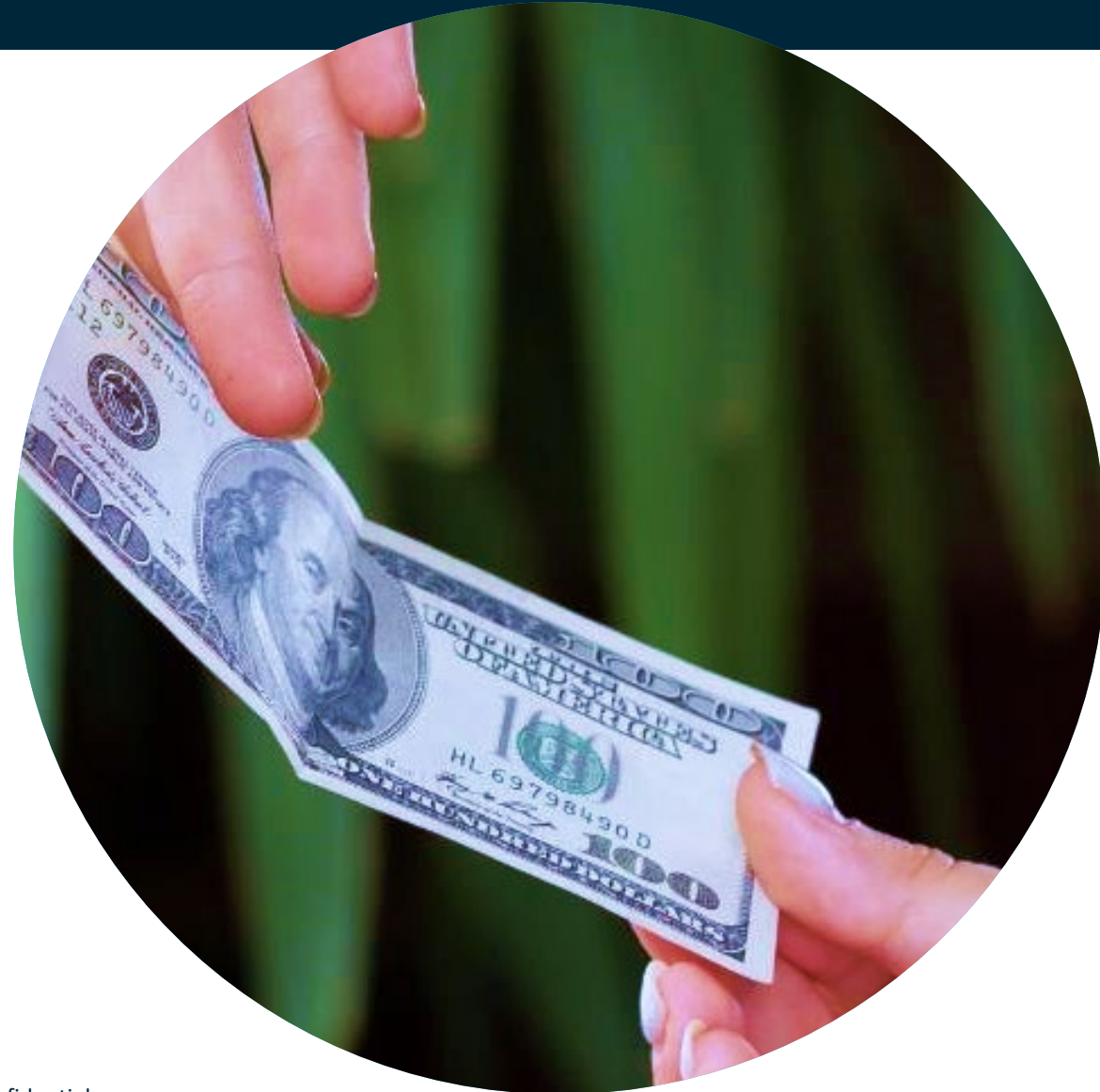
- **Federal Collective Action**
  - Typical recovery for 10-30% of current and former employees
- **State Class Action**
  - Typical recovery for 100% of current and former employees
- **Attorneys' Fees**

# What Are the Potential Penalties?

- **No Tip Credit**
  - \$50 in tips x 156 weeks x 200 employees x 2 = \$3.12M
- **With FLSA Tip Credit**
  - \$250 in tips & tip credit x 156 weeks x 200 employees x 2 = \$15.6M

# Parting Thoughts on Tip Trends and Traps

- Expanding scope of tipping is the square peg for the round hole of existing law
- Expect more litigation, especially on the fringes
- Pushing the envelope may = target case
- For multi-state operations, one size rarely fits all
- Paying full minimum wage reduces but does not eliminate risk



# One Last Thing - No Tax on Tips



# No Tax on Tips

- July 2025 “One Big Beautiful Bill Act” included no tax on tips through 2028
  - Treasury regulations yet to come
- Above-the-line deduction for up to \$25,000 in tip income
- Limited to “cash” tips, which is defined to include credit card charged tips
  - Likely includes other electronic payments equivalent to cash/charge
  - Not gift baskets, movie tickets, etc.
  - Not mandatory service charges
- Only occupations “customarily and regularly” receiving tips as of December 31, 2024
  - Back of house?
  - Non-traditional settings?
- No new obligation on employers, but avoid giving tax advice!



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1. Reply “Yes” to the on-screen poll
2. Visit our website: Compliancehr.com
3. Email our team at [demo@compliancehr.com](mailto:demo@compliancehr.com)

### Benefits of a custom demo:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
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#### Resources

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[State-by-State CLE Guide](#)

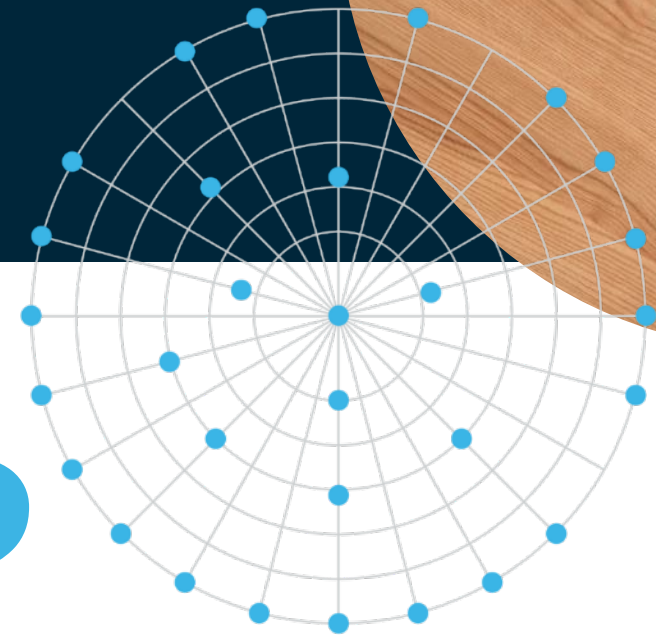
[BeaconLive - How to Access Certificates](#)

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# Questions?

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**Thank You**

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