

Governor Romney Signs Bill Amending Tip Statute

On Thursday, June 10, 2004, Governor Romney signed legislation (H. 4431) amending M.G.L. c. 149 §152A, commonly known as the Tip Statute. The amendment addresses many of the legal issues raised in recent class action litigation between servers and hotels and restaurants in Massachusetts. The new version of the Tip Statute specifically allows tip pooling, defines a service charge as synonymous with a tip or gratuity, and clarifies which employees are entitled to receive service charges and tips from tip pools. The Tip Statute now covers all employees receiving tips, such as restaurant workers, taxicab drivers, hairdressers, baggage handlers, and valets, and imposes a penalty of up to \$25,000 or up to two years in jail for violations.

Most importantly for employers, the new Tip Statute:

- allows employers to implement and administer a tip pool, provided that only wait staff employees, service employees or service bartenders participate;
- defines a “service charge” as a fee charged by an employer to a patron in lieu of a tip that a patron reasonably would expect to be given to a wait staff employee, service employee, or service bartender;
- directs employers to distribute the total proceeds of a service charge only to the wait staff employees, service employees, or service bartenders in proportion to the service provided by those employees, and
- exempts from the statute any house or administrative fee charged to a patron either in addition to or instead of a service charge or tip, provided that the employer informs the patron in writing that the fee does not represent a tip or service charge for wait staff employees, service employees, or service bartenders.

The new version of the Tip Statute is effective September 8, 2004. Employers in the service and hospitality industries should review their policies, practices and documentation with regard to the distribution of tips, gratuities or service charges to ensure compliance with the Statute.

If you have any questions concerning the impact of this Statute, please feel free to contact your Seyfarth Shaw LLP attorney.

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