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An Act To Amend the Laws Regarding Tips Used in Payment of Service Employees

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §663, sub-§8, as amended by PL 2007, c. 367, §1, is further amended to read:

8. Service employee. "Service employee" means any employee engaged in an occupation, ~~such as waiters, waitresses, bellhops, counter personnel and bartenders who serve customers,~~ in which the employee customarily and regularly receives more than \$30 a month in tips.

Sec. 2. 26 MRSA §663, sub-§15 is enacted to read:

15. Tip. "Tip" means a sum presented by a customer in recognition of services performed by one or more service employees, including a charge automatically included in the customer's bill. "Tip" does not include a service charge added to a customer's bill in a banquet or private club setting by agreement between the customer and employer.

Sec. 3. 26 MRSA §664, sub-§2, as amended by PL 2007, c. 367, §2, is further amended to read:

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. ~~Service employees may volunteer to pool their tips to be split among other service employees or may volunteer to share a part of their tips with other employees who do not generally receive tips directly from customers.~~ Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.

Sec. 4. 26 MRSA §664, sub-§§2-A and 2-B are enacted to read:

2-A. Tip pooling. This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement among service employees that is consistent with the federal Fair Labor Standards Act and regulations made pursuant to that Act.

2-B. Service charges. An employer in a banquet or private club setting that adds a service charge shall notify the customer that the service charge does not represent a tip for service employees. The employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees at the rate required by this section.

Effective 90 days following adjournment of the 125th
Legislature, First Regular Session, unless otherwise indicated.