

Rebecca Buck

From: Damien Leonard
Sent: Friday, February 09, 2018 3:24 PM
To: Rebecca Buck; Alice Nitka; Jane Kitchel; Rebecca Buck; Richard McCormack; Richard Sears; Robert Starr; Tim Ashe
Cc: Jane Kitchel <janek45@hotmail.com> (janek45@hotmail.com); Stephanie Barrett; Richard Westman (rawestman@gmail.com)
Subject: Question regarding service charges and tips

Good Afternoon All,

In response to Sen. McCormack's question about service charges yesterday, I reviewed the State and federal wage and hour laws relating to service charges and tips.

The regulations for the federal FLSA provide the following explanation of what constitutes a tip:

"A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, who has the right to determine who shall be the recipient of the gratuity." 29 C.F.R. § 531.52.

Similarly, Vermont's wage and hour regulations define a tip as:

"A sum of money gratuitously and voluntarily left by a customer for service, or indicated on the bill or the charge statement, to be paid to service or tipped employees for directly and personally serving that customer in a hotel, motel, tourist place or restaurant. Note: An employer mandated service charge is not a tip."

In contrast, a mandatory service charge, like a banquet fee or automatic gratuity, is not considered a tip and cannot be counted towards the tip credit taken for a tipped employee. Instead, a service charge is considered part of the employer's gross receipts and may be used to satisfy the employer's minimum wage and overtime obligations. An employer is not required to pay any portion of a service charge to its employees.

The issue that Sen. McCormack raised relates to disclosure to customers of what a service charge is being used for. Several other jurisdictions have addressed this issue by requiring an employer to disclose that the service charge is not a gratuity or the percentage that will be used to pay employees wages, or by requiring that 100% of any service charge be given to the employees that provided the service. At present, neither State nor federal law requires that Vermont employers disclose what a service charge is being used for or that employers give amounts received through service charges to the employees providing the service.

Please let me know if you have any additional questions. I am happy to discuss the issue with the Committee when you resume work on S.40 next week.

Best,

Damien

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