

**HOUSE . . . . . No. 4324**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Linda Dorcena Forry**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:  
An Act relative to the pooling of tips.

PETITION OF:

NAME:

Linda Dorcena Forry

DISTRICT/ADDRESS:

12th Suffolk

# The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
\_\_\_\_\_

An Act relative to the pooling of tips.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1: Subsection (a) of section 152A of chapter 149 of the General Laws as appearing In the 2008 Official Edition is hereby amended by inserting before the definition of “Wait staff employee” the following two definitions:-

“Managerial responsibility”, an employee shall be considered to have managerial responsibility if said employee (a) works in an establishment where fellow employees are paid less than minimum wage and whose earnings are largely based on tips pursuant to MGL c. 151, Section 7, (b) regularly supervises two or more other employees, (c) has management as the primary duty of the position in a capacity greater than mere supervision, (d) has input into the job status of other employees, including but not limited to interviewing, selecting, and training employees; setting rates of pay and hours of work; maintaining production or sales records (beyond the merely clerical); appraising productivity; handling employee grievances or complaints, or disciplining employees; determining work techniques; planning the work; apportioning work among employees; determining the types of equipment to be used in performing work, or materials needed; planning budgets for work; monitoring work for legal or regulatory compliance; providing for safety and security of the workplace, (e) is paid a set hourly wage or salary, excluding any tips or bonuses or nonmonetary benefits, which is equal to or greater than

the then applicable minimum fair wage as defined under MCL c. 151, Section 1, plus one hundred (100%) percent of said minimum fair wage, and (f) has the direct authority to hire and fire without additional approval.

“Service employee”, a person who (a) works in an occupation in which employees customarily receive tips or gratuities, and who provides service directly to customers or consumers, but who works in an occupation other than in food or beverage service, and who has no managerial responsibility, (b) works in a restaurant or other place where prepared food or beverages and has minimal supervisory authority, (c) serves beverages or prepared food directly to patrons, or clears patrons tables.

SECTION 2: Said section 152A of said chapter 149, as so appearing, is hereby further after the word “demand” , in line 38, the following words:- ,and no employer or employee with managerial responsibility as defined in this section shall demand.

SECTION 3: Said section 152A of said chapter 149, as so appearing, is hereby further amended by inserting after the word “or”, the first time it appears , in line 45, the following words:-  
employee with managerial responsibility as defined in this section

SECTION 4: Said section 152A of said chapter 149, as so appearing, is hereby further amended by inserting after the word employees , in line 56, the following words:-

and in no way shall be remitted to an employee with managerial responsibility as defined in this section.

SECTION 5: Said section 152A of said chapter 149, as so appearing, is hereby further amended by inserting after the word employer , in lines 63 and 64, line 69, and in line 76 the following words:-  
or employee with managerial responsibility as defined in this section

SECTION 6. This act shall take effect as of June 10, 2004.