

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Gong Lu and T Bakery, Inc.,**  
Petitioners

v.

Docket No. LB-25-0230

**Office of the Attorney General,**  
**Fair Labor Division,**  
Respondent

**Appearance for Petitioners:**

Gong Lu

**Appearance for Respondent:**

Alexander Sugerman-Brozan, Esq.

**Administrative Magistrate:**

Kenneth J. Forton

**RULING ON MOTION FOR SUMMARY DECISION**

Petitioners Gong Lu and T Bakery, Inc. timely appeal a citation issued by the Fair Labor Division (FLD) of the Massachusetts Attorney General’s Office. It charges the Petitioners with violating the Massachusetts Tips Law, G.L. c. 149, § 152A(b), by demanding, requesting, or accepting from “wait staff employees” or “service employees” any payment or deduction from a tip or service charge given to the employees by a patron, or retaining any tip or service charge given directly to the employer during the period January 1, 2024 through December 16, 2024. The FLD assessed restitution, statutory interest, and a civil penalty, all discussed below.

At an April 30, 2025 pre-hearing conference I determined that the matter potentially could be resolved by summary decision and issued a briefing schedule. On June 27, 2025, the FLD filed its motion for summary decision, along with an affidavit of FLD Investigator Eduina Butts. Petitioners filed their opposition on July 25, 2025.

The following facts either are established beyond genuine dispute or are taken as true in Petitioners' favor. *See generally* 801 CMR 1.01(7)(h); *Caitlin v. Bd. of Registration of Architects*, 414 Mass. 1, 5-7 (1992).

T Bakery is a self-service retail bakery and coffee shop in Quincy, Massachusetts. Customers select pre-packaged pastries and baked goods from displays and pay at the register. Seating is available on the premises, but there is no table service and no staff wait on the tables. Customers are not greeted at the tables, no orders are taken from them while they are seated, and no food or beverages are delivered to the tables after ordering. Employee duties are cashiering, beverage preparation, and food and beverage packaging.

On October 24, 2024, FLD Investigator Eduina Butts issued a payroll demand to the employers, T Bakery, Inc. and Gong Lu, requesting payroll and timekeeping records for employees for the time-period of May 1, 2024 through October 24, 2024, and documents concerning the calculation and reporting of tips. Butts Aff., ¶ 3. Petitioners produced the requested documents in two batches, including a profit and loss statement for the period of January 2024 through October 2024, which showed the total amount of tips the Employer had collected during that ten-month period to be \$44,694.29. Butts Aff., ¶ 4. Based on the information and documents provided by Petitioners, Investigator Butts performed a tips audit and determined that the Employer had not given the \$44,694.29 in tips to its employees over 25 biweekly pay periods. Butts Aff., ¶ 5.

On March 13, 2025, the Attorney General cited T Bakery, Inc. and Gong Lu, its sole corporate officer, for retaining the tips and not distributing them to their workers, without specific intent, for the period January 1, 2024 to December 16, 2024, in violation of G.L. c. 149, § 152A(b). The citation required Petitioners to pay \$47,822.89 in restitution, comprising tips of \$44,694.29 and statutory interest of \$3,128.60.<sup>1</sup> FLD also assessed an \$8,000.00 civil penalty. Petitioners timely appealed the citation.

To prevail on appeal, Petitioners must demonstrate by a preponderance of the evidence that the citation was erroneously issued. G.L. c. 149, § 27C(b)(4). Only then, can DALA vacate or modify the citation. *Id.*

Petitioners do not dispute that they did not distribute the cited amount of tips to their workers. After all, the tips figures came directly from Petitioners as a result of the FLD audit. Tips are left in two ways: a tip jar on the counter for cash tips and a tip line on credit card transactions through the restaurant's POS (point of sale) system. The credit card tipping function is customer-initiated and not encouraged by the business or staff. Petitioners did not touch the cash tips; the employees distributed them among themselves. The credit card tips, on the other hand, were retained by Petitioners and not distributed to their counter workers.

Petitioners advance several arguments why they should not be required to pay restitution. They also challenge the civil penalty.

First, they argue that their employees are not covered by the Tips Law because they are not "wait staff employees" or "service employees." A wait staff employee is

*a person, including a waiter, waitress, bus person, person in a quick service restaurant who prepares or serves food or beverages as part of a*

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<sup>1</sup> G.L. c. 149, § 152A(f) authorizes 12% interest per annum, but the FLD decided to charge only 7% interest.

team of counter staff or any other counter employee who: (i) serves beverages or prepared food directly to patrons . . .; (ii) works in a restaurant, banquet facility or other place where prepared food or beverages are served; and (iii) has no managerial responsibility . . . .

G.L. c. 149, § 152A(a). (Emphasis added.) Here, a reasonable reading of this definition is that the broad term “person” is not limited to the enumerated list of employees who typically qualify as wait staff that follows it. Immediately following the word “person” is the word “including,” which generally signals that a non-exhaustive list will follow.

*Soroken v. Conservation Comm’n of Falmouth*, 98 Mass. App. Ct. 1118, at \*3 (2020) (Memorandum and Order under former Appeals Court Rule 1:28). There is no reason in this context to assume that the legislature intended this list to be restrictive, as the statute is meant to make sure that, if patrons leave tips for service workers, the workers receive them. I therefore read this definition to apply to any *person* who meets the three enumerated requirements.

The Petitioners’ employees meet the three enumerated requirements. Even if I conclude that the counter employees do not “serve” prepared food, they do serve *beverages* directly to patrons at the counter. T Bakery is a place where beverages and food are served. And, none of the employees was a manager.

The employees also happen to fit two of the listed job categories in the definition of wait staff employee. They work on a team at a “quick service restaurant” and/or qualify as “other counter employee[s].” *Id.*<sup>2</sup> Petitioners call themselves a “self-service retail bakery and coffee shop” in an attempt to distinguish themselves from a quick

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<sup>2</sup> From 2004 until 2020, the Tips Law covered “counter staff,” among other positions. In 2020, that term was replaced with “person in a quick service restaurant who prepares or serves food or beverages as part of a team of counter staff or any other counter employee,” thus broadening the law’s protections. *Compare* Acts 2020, c. 358, § 77, *with* Acts 2004, c. 125, § 13.

service restaurant. The statute does not supply a definition of “quick service restaurant,” nor is that term used anywhere else in the General Laws or the Code of Massachusetts Regulations. I read the term to mean a business where patrons generally order or select items and pay before eating. Then, the food and drink may be consumed on premises, taken out, or delivered to the customer’s location. Fairly read, this term applies to T Bakery. The employees sell food that has already been prepared; they also prepare and serve beverages when customers order them. The bakery provides seats for its customers so that they can eat the baked goods and drink their beverages on-site, or they may take the food and beverages to go.

Moreover, even if I were to conclude that the employees were engaged “in an occupation other than . . . food or beverage service,” like cashiering for instance, the employees would still be covered by the Tips Law because they would qualify as “service employees,” who are defined as “person[s] who work[] in an occupation in which employees customarily receive tips or gratuities, and who provide[] service directly to customers or consumers.” *Id.* It is commonplace knowledge that it has become customary to leave tips for counter workers or cashiers at nearly any business that sells prepared food or beverages. This conclusion is reinforced by the fact that patrons were on track to leave nearly \$50,000 of credit card tips for Petitioners’ employees by the end of the calendar year.

Second, Petitioners contend that they acted in good faith, as they followed their accountants’ advice, paid at least minimum wage to all employees, and rectified the issue as soon as the FLD brought it to their attention. These facts, they maintain, show that they intended to comply with, and did not willfully disregard, the law. Upon being informed by the FLD of its interpretation of the law, Petitioners immediately began

distributing credit card tips to their employees. Assuming this is true, it does not affect the amount of restitution because they have already admitted that they withheld the tips, the Tips Law is a strict liability statute, and the citation acknowledged that they acted without specific intent. *Lighthouse Masonry Inc., v. Div. Admin. L. App.*, 466 Mass. 692, 698-99 (2013). “Under a strict liability scheme, an employer’s reason for the violation is irrelevant; the fact of the violation is sufficient for the penalty to issue.” *Id.* at 699. “Employers must suffer the consequences of violating the statute regardless of intent.” *Dixon v. City of Malden*, 464 Mass. 446, 453 (2013) (internal quotations omitted).

Third, Petitioners urge DALA to vacate or reduce the civil penalty. G.L. c. 149, § 152A(f) makes violators of the Tips Law subject to the remedies in G.L. c. 149, § 27C. Under § 27C, if the employer has not been cited before and lacked “specific intent,” as alleged in the citations, the FLD may impose a fine of \$7,500 for each violation. *Id.* § 27C(b)(2). Each week that an employer fails to pay each employee the tips they are due may be deemed a separate violation. The \$8,000 total civil penalty is well within those boundaries. Instead, Petitioners urge that the facts already listed in this decision plus the fact that their employees make a total wage exceeding the minimum wage constitute mitigating circumstances that warrant a reduction of the penalty.

DALA may modify the penalty amount if either: (1) the FLD’s penalty assessment relied upon facts that were not established at the hearing; or (2) the petitioner “established different facts material to the penalty assessment.” DALA/GJU Standing Order 23-001. Petitioners have admitted all of the facts upon which the FLD relied in assessing the civil penalty. The FLD took into account that Petitioners received no prior citations, that they did not act in bad faith, that there were 31 service employees, that the business had been in operation for 10 months, that it had a total gross payroll of

\$508,297.67, and the amount of tips in question. Butts Aff., ¶ 10. In short, Petitioners have not pled any facts that the FLD did not take into consideration in assessing the civil penalty. Therefore, a modification of the civil penalty is not warranted.

Finally, Petitioners suggest that they should not be required to pay the ordered restitution because no employee complained about the employer's practice and their past treatment of credit card tips was based on professional advice and a good faith misunderstanding of the law. The Tips Law directly addresses this argument. "No employer or person shall by a special contract with an employee or by any other means exempt itself from [§ 152A]." G.L. c. 149, § 152A(g).

For the foregoing reasons, the Fair Labor Division's motion for summary decision is allowed. The citations are therefore affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

Dated: September 3, 2025