

Service Charges and Minimum Wage - Minimum wage Opinion Letter 01-08-08

January 8, 2008

I am writing in response to your request, on behalf of your client, for this Office's written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151. Specifically, you have asked whether a service charge imposed by your client, which is paid in full to banquet servers and bartenders, may constitute the entire minimum wage required by state law. [\[1\]](#)

It is my understanding that your client is a hotel that provides banquet services at its Massachusetts location. The hotel imposes a compulsory service charge in lieu of a tip for each banquet, and remits the entire service charge to the servers and bartenders who work the particular event. Your client does not claim a tip credit against wages, i.e. pay a service rate (\$2.63 per hour) plus tips, and the banquet service charge payments result in an hourly wage that exceeds the state minimum wage, typically \$15.00 per hour or more.

The Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, establishes the current state minimum wage of \$8.00 per hour, and permits employers, under certain conditions, to pay a service rate of \$2.63 per hour to employees who customarily and regularly receive tips of more than \$20 per month. M.G.L. c. 151, §7; 455 C.M.R. 2.02(2). The employer may pay the service rate only if: 1) the employee is informed of the law prior to performance of the work, 2) the employee actually receives tips in an amount which, when added to the service rate, equals or exceeds the minimum wage; and 3) all tips received by the employee are retained by him or her, or distributed to the employee through a valid tip-pooling arrangement.

The Massachusetts Tip Pooling Law, M.G.L. c. 149, §152A, provides that services charges such as those imposed by your client must be remitted in full to wait staff employees, service employees, and service bartenders, as those terms are defined in the statute. [\[2\]](#) This statute further defines "service charge," as:

a fee charged by an employer to a patron *in lieu of a tip* to any wait staff employee, service employee, or service bartender, including any fee designated as a service charge, tip, gratuity, or a fee that a patron or other consumer would reasonably expect to be given to a wait staff employee, service employee, or service bartender *in lieu of, or in addition to, a tip*.

M.G.L. c. 149, §152A (emphasis added). Significantly, the statute does not provide that services charges may be paid in lieu of an employee's wage - either the statutory minimum wage or the \$2.63 service rate.

Given these statutory provisions, and after consultation with the FLD, it is this agency's determination that your client may either 1) pay a service rate of \$2.63 and credit the imposed service charge towards the balance of the minimum wage due (\$5.37), assuming the conditions in 455 C.M.R. 2.02(2) are met; or 2) pay the full minimum wage of \$8.00 per hour. In either event, M.G.L. c. 149, §152A, would require that the full service charge be remitted to the banquet servers and bartenders.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,

Lisa C. Price, Deputy General Counsel

[\[1\]](#)As you know, most employers are also subject to the federal minimum wage and hour law, found in the Fair Labor Standards Act (FLSA), and regulations promulgated thereunder. For information about applicable federal wage and hour laws, you should contact the U.S. Department of Labor.

[\[2\]](#) The Tip Pooling Law is interpreted and enforced by the Fair Labor Division (FLD) of the state Attorney General's Office.

***=Names have been Omitted