

Minimum Wage Opinion Letter 11-24-03 - Service Rate During Wait Staff Training

November 24, 2003

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law and Regulations. Specifically, you have asked whether the service rate may be paid to restaurant wait staff during an initial training period when they earn no tips. [1]

The Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, §7, 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. See also 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 (this determination is made on a weekly basis, regardless of payroll pay period); 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. [2]

Newly-hired employees who do not receive tips during their initial training period are not "tipped employees," i.e. they do not customarily and regularly receive more than \$20 per month in tips. [3] Therefore, these employees must be paid at least the basic minimum wage of \$6.75 per hour for all hours worked during their training period. Once the training period ends and the employee begins to receive tips, the employer may pay the service rate provided the employee receives tips in that work week at a rate in excess of \$20 per month, and all the conditions discussed in paragraph two of this letter are met.

I hope this information has been helpful. Please note that this opinion is based solely on the information provided with your request. The existence of other facts not contained in your request might require a different conclusion. If you have any further questions, please feel free to contact me.

Sincerely,
Lisa C. Price
Legal Counsel

[1] Please note that 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. The telephone number for the regional office is (617) 624-6700.

[2] If the employee is engaged in the serving of food or beverages, the tip-pooling arrangement must comply with M.G.L. c. 149, §152A.

[3] The determination of whether an employee customarily and regularly receives more than \$20 per month in tips is made on an individual basis. A newly-hired wait staff employee will not be considered a tipped employee merely because other wait staff in the establishment customarily and regularly receive the requisite monthly tips.

=Names have been Omitted