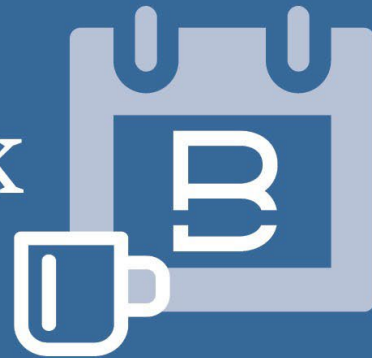


The Work Week

Bassford Remele Employment Practice Group



September 3, 2024

Welcome to another edition of *The Work Week with Bassford Remele*. We hope everyone enjoyed the Labor Day holiday.

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Gratuity Laws in Minnesota

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Over the last few years, the classic “tip jar” has been replaced with that ominous swivel screen that asks you just a few questions, including, how much you would like to tip. Whether employers are determining whether to add the option to tip in their businesses or currently offer the option, it’s important to ensure compliance with relevant Minnesota laws.

What is a Gratuity?

Minnesota law defines gratuities as:

monetary contributions received directly or indirectly by an employee from a guest, patron, or customer for services rendered and includes an obligatory charge assessed to customers, guests or patrons which might reasonably be construed by the guest, customer, or patron as being a payment for personal services rendered by an employee and for which no clear and conspicuous notice is given by the employer to the customer, guest, or patron that the charge is not the property of the employee.

Minn. Stat. § 177.23, subd. 9. You may have also come across “employee wellness” charges or something similar on the bottom of your bill – is that a gratuity? If the charge does not include a clear and conspicuous notice that the charge is, in fact, not the property of the employee, then it could be considered a gratuity. Obligatory charges, such as a wellness charge, which might reasonably be construed by the guest as a sum to be given to an employee as payment for personal services rendered, include, but are not limited to,

service charges, tips, gratuities, and/or surcharges which are included in the statement of charges given to the customer could be considered a gratuity.

Minnesota law defines “clear and conspicuous notice” for purposes of gratuities as a notice that the obligatory charge is not a gratuity and that the notice is clearly printed, stamped, or written in bold type on the menu, placard, the front of the statement of charges, or other printed material given to the customer. Specifically, type which is at least 18 point (one-fourth inch) on the placard, or 9 point (one-eighth inch) or larger on all other notices is clear and conspicuous.” Minn. Admin. R. 5200.0080, subp. 4b.

Gratuities Do Not Count Towards Minimum Wage

Employers are prohibited from counting tips received by an employee toward the payment of minimum wage, meaning employers must pay the applicable minimum wage in addition to any tips employees may receive. Minn. Stat. § 177.24, subd. 2.

Pool and Tip Shares

Employees, of course, are allowed to voluntarily share gratuities with other employees. Employers, however, are prohibited from requiring an employee to share a tip with the employer or other employees or to contribute to any tip pool. Minn. Stat. § 177.24, subd. 3.

There are two limited exceptions where employers may require tip pooling. First, when more than one direct service employee provides direct service to a customer in a given situation such as banquets, a gratuity which is divided among the direct service employees is not a violation of Minnesota tip laws. “Direct service employees” are defined as one who in a given situation performs direct service for a customer and is to be considered a tipped employee. On the other hand, an indirect service employee is a person who assists a direct service employee, which include, but are not limited to, bus people, dishwashers, cooks, or hosts.

Second, dividing money left in a tip jar, or the equivalent of a tip jar, among direct service employees working on the same shift is not a violation of Minnesota tip laws.

Gratuities from Credit Card or e-payments

Starting August 1, 2024, employees must receive the full amount of gratuities paid by card or e-payment. Before this date, employers could deduct the swipe fee for these payments from tips. Now, employers must give the full tip amount to workers. Gratuities received through credit cards or other types of electronic payments must be paid to the employee in the next pay period. Minn. Admin. R. 5200.0080, subp. 7.

New California Law Related to Service Fees

California passed a new law that went into effect on July 1, 2024, which prohibits mandatory fees or service fees.

The law is being referred to as the “Honest Pricing Law” or “Hidden Fees Statute.” It makes it illegal for a business to advertise or list a price for a good or service that does not include all required fees or charges other than taxes and shipping costs. The new statute is considered a price transparency law.

The California Department of Justice released an FAQ on the new law, which addresses mandatory fees charged by restaurants. The California DOJ states that “if a restaurant charges a mandatory fee, it must be included in the displayed price. Under the law, a restaurant cannot charge an additional surcharge on top of the price listed. Gratuity payments that are not voluntary must be included in the list price.”

This trend may continue in other states, including Minnesota, and we will continue to monitor if similar laws are introduced in other states.

The [Bassford Remele Employment Law](#) group regularly counsels on compliance issues. Please feel free to reach out to our team with any questions.

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