"What's in a Name?" Potentially, Treble Damages! A Look at the Massachusetts Tips Act

BY ROBERT G. YOUNG • FEBRUARY 8, 2022

When writing his famous line in Romeo and Juliet, Shakespeare clearly was not thinking of the Massachusetts Tips Act. The Supreme Judicial Court (SJC) recently issued a reminder that, in fact, a name can be critical to imposing liability on employers under the statute.

The Tips Act requires an employer to remit any "service" charge to waitstaff, but it also expressly allows an employer to designate a fee as an "administrative" or "house" charge and retain the proceeds for itself. In *Hovagimian v. Concert Blue Hill, LLC*, the SJC faced the dilemma of how to apply the Tips Act in the face of conflicting contract documents that used different terms to describe a particular fee.

Blue Hill Country Club hosted private events at its facility. Customers seeking to hold an event at the Club went through a three-step process. First, the customer signed an "Event Contract," which set out various details for the event. The Event Contract provided that the Club would charge a 10% gratuity to be distributed to the waitstaff as well as a 10% "administrative" or "overhead" charge that the Club would retain. The second step consisted of a "Banquet Event Order Invoice," which designated event charges in three categories: "charges," "taxes," and "service charges and gratuities;" the Order Invoice did not, however, explicitly label the "administrative" or "overhead" fee. The final step was a post-event final bill. This final bill had charges broken down into "tax," "gratuity," and "service," and the 10% administrative fee was labeled under the "service" category on this final bill.

Waitstaff employees filed a lawsuit against the Club claiming that the Tips Act requires the Club to remit the "service" charges to them. The Club responded by asserting that the "service" charge was in fact the "administrative" fee that it was entitled to keep, receiving the "service" label solely through faulty drafting of the final bill. The Club prevailed at the trial court level and at the Appeals Court, but the SJC took a different view.

The SJC reasoned that the language of the Tips Act was clear and unambiguous: any amount listed on a bill as a "service" charge must be remitted to the waitstaff. The Court noted that the Club drafted all of the event paperwork,

and therefore the Club properly bore the burden of using the correct verbiage if it did not wish for a fee to become subject to the Tips Act. The Court noted that the Club actually did use the correct wording to avoid Tips Act liability in the initial Event Contract by labeling the additional 10% fee as “administrative” or “overhead.” However, because the Club did carry that labeling through the final bill–and, in fact, explicitly designated the charge as a “service” charge in the final bill–the Tips Act required the Club to distribute the fee to waitstaff. Accordingly, the Court directed a judgment in favor of the plaintiffs.

This case serves as a stark reminder that entities hosting events must take great care when preparing their paperwork. Labels can be decisive under the Tips Act, and even an unwitting use of the term “service” charge can subject an entity to significant statutory penalties if those amounts are not remitted in full to the waitstaff.