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Labor and Employment Alert

Massachusetts Supreme Judicial Court Clarifies the Lawfulness of No Tipping Policies

April 10, 2015

On April 10, 2015, the Massachusetts Supreme Judicial Court held in *Meshna v. Scrivanos* that an employer may implement a no tipping policy for workers otherwise covered by the Massachusetts Tips Act (M.G.L. c.149, § 152A). The Tips Act prevents employers from retaining tips given by customers to wait staff employees, bartenders or other services employees.

In *Meshna*, the plaintiffs were a group of current and former employees at 66 Dunkin' Donuts franchises operated by the defendants in Massachusetts. They alleged that the defendants had implemented a no tipping policy at the majority of its locations. Under the policy, employees were prohibited from accepting tips from customers and were instructed to clearly communicate the no tipping policy to customers. Further, defendants had posted signs stating “no tipping” or “thank you for not tipping” at the stores. If customers nonetheless gave a tip, initially, the tips were placed in the cash registers, and then later, they were put in “abandoned change” cups for use by other customers. The plaintiffs sued in Massachusetts state court, claiming that the defendants’ no tipping policy violated the Tips Act. The trial court held that the Tips Act did not prohibit the implementation of a no tipping policy, but that if customers nonetheless left tips, then those tips belonged to the employees and not the employer.

On appeal to the Supreme Judicial Court, the Court found that nothing in the language of the Tips Act could be read as prohibiting a no tipping policy. In its view, the statute only limited what an employer could do with tips actually given to an employee. As to tips given by customers in contravention of a no tipping policy, the Court explained that an employer will violate the Tips Act if it retains tips without first clearly communicating the no tipping policy to customers. The Court reasoned that where the policy is not clearly communicated, customers may assume that tips left will go to the employees. However, such an expectation would not be reasonable where the customer has been informed that any tips intended for employees will not be remitted to them. The Court explained that a clear communication of a no tipping policy could be accomplished through signs or by instructing employees to communicate the existence of the policy to customers.

Meshna is an important decision for employers in the hospitality industry. The Tips Act has been a source of significant class action litigation, and many employers have adopted no tipping policies to prevent such disputes. In light of *Meshna*, employers who utilize these polices should make sure that they are clearly communicated to customers.

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