

Massachusetts State Law Allows a \$25,000 Civil Penalty for Restaurateurs who Violate the Tip Law; Wait Staff, Bartenders Entitled to 100% of the Tips

By Kimberly Blanton, The Boston Globe
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Aug. 10, 2004 - Two waiters who say they were fired because they complained about being forced to share tips at upscale Boston restaurants sued for damages yesterday, along with a third waiter with the same claim who left his job voluntarily.

The suits come two months after legislators clarified Massachusetts' decades-old tip law, which says waitresses, waiters, and bartenders are not required to share tips with other workers, such as kitchen staff and managers.

Waiters have become more aware of the tip issue because of a series of suits filed two years ago, along with efforts by the attorney general's office to inform them of their rights. Some waiters worked for years without knowing they were entitled to 100 percent of the tips.

"As this is getting a lot of publicity, and more and more waiters are speaking up for their rights, many of them are suffering retaliation, and that is not legal," said Boston attorney Shannon Liss-Riordan, who filed complaints yesterday on behalf of former waiters at Excelsior, The Federalist, and Grill 23 & Bar. "You cannot take action against an employee for speaking out under the wage law."

Liss-Riordan said she will seek class-action status on behalf of all waiters at The Federalist and Grill 23 & Bar. If granted, dozens of plaintiffs could be added, she said.

After seven months as an Excelsior bartender, Robert Thompson was fired in December 2003, he said, soon after the restaurant learned he had filed a complaint about tip diversions at his previous employer. Thompson, who is 37 and has worked in the restaurant business for 15 years, said his Excelsior manager told him, "I don't think you're the right type of person for our place."

He and the other plaintiffs are seeking unspecified amounts of money for lost pay and damages.

Excelsior is jointly owned by chef Lydia Shire and Kenneth Himmel, who also owns the Grill 23 and Harvest restaurants.

Nicole Barrick, a spokeswoman for Excelsior, declined to comment on the suit, which named Himmel Shire Restaurant Co.

The suits were filed in Suffolk Superior Court.

In another case, Donald Benoit, who worked on the Federalist's banquet staff, said he was fired in October 2003 after he "complained about not receiving the total service charge reflected on the customer's bill," his complaint said.

William Sander, The Federalist's general manager, said Benoit was terminated because of an unspecified "guest situation." Sander denied Benoit's claim. "I am clearly aware" of laws regarding tips, he said, "and we do follow the law."

In the third case, Alan Banks, a waiter for 19 years at Grill 23, decided to sue when he became aware that he was not paid fairly, he said. He voluntarily left the restaurant in early 2003 to open a gift store in Maine.

The practice of splitting tips "went on everywhere," Banks said, "so if you went up the street it would go on there, too."

Barrick declined to comment on the suit against Grill 23.

The attorney general's office backed changes in the tip law to help stop a practice it said some restaurants engaged in: lowering overhead costs by subsidizing the wages of those who are not waiters and bartenders with tip income.

Restaurants are not required to pay servers the state's minimum wage, \$6.75 an hour. Waiters and waitresses can be paid \$2.63 an hour, provided that they receive 100 percent of their tips. The law will now more clearly state that only waiters are due all tips and define serving staff as anyone who delivers food and beverages "directly to patrons."

"We have worked hard to conduct outreach to worker communities to make sure they understood" the law, said assistant attorney general Daniel Field. "We think that's had a tremendous impact on an understanding of rights and responsibilities," he said. His office is not involved in the suits filed yesterday.

Starting Sept. 8, state law will allow a \$25,000 civil penalty for restaurateurs who violate the tip law.

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