

# Lawsuits filed by wait staff over tips

## Several area clubs don't share fees

By Franco Ordoez, Globe Staff | October 14, 2004

A former waiter has filed a class-action lawsuit against a prestigious West Newton country club, contending that his employer illegally withheld thousands of dollars in tips from him and other servers.

John Meimaridis of Newton is seeking at least \$500,000 in his suit against Brae Burn Country Club, filed earlier this month in Middlesex Superior Court. It's just one of several recent cases where service employees have taken legal action to reclaim tip money they allege their employers have unjustly taken -- sometimes to distribute to other workers and management.

Some of Boston's finest restaurants have been brought into the legal debate over whether waiters, who can legally be paid lower than minimum wage based on their expected tip income, can be required to share their gratuities with other workers, including managers.

Lawyers, however, have recently broken new legal ground by filing similar complaints against clubs and banquet halls, which, despite paying servers a higher hourly wage, still charge customers a "service fee." They argue that the fees are equivalent to tips and must be paid to the servers unless otherwise specified.

"Some places think that if they just pay a flat hourly rate that's higher than minimum wage that takes care of their obligation under the law, but it doesn't," said Shannon Liss-Riordan, a Boston lawyer representing Meimaridis.

Meimaridis declined to comment on his suit.

According to Liss-Riordan, he made between \$10 and \$12 an hour during his nine months of employment in 2002, when he worked at catered events. For such occasions, according to his complaint, Brae Burn added a 17 to 21 percent service charge to patrons' bills.

Meimaridis contends that only a portion of that money was distributed to service staff -- initially, he said, none was.

Steven Cummings, general manager at Brae Burn, home of the 2004 New England PGA golf championship, said the organization was in the process of retaining a lawyer and declined to comment on the charges.

In June, Governor Mitt Romney signed new legislation, filed by the attorney general's office, that revised the decades-old tip laws. It clarifies that wait staff and bartenders do not have to share their tips with nonservers such as kitchen staff and managers.

The Massachusetts Restaurant Association, which represents 5,000 restaurants statewide, supported the bill. Peter Christie, the association's president, believes it will clear up ambiguities that have prompted these lawsuits.

Christie said the suits are a result of old laws that have become obsolete because of the current way of doing business in the restaurant industry.

Decades ago, when restaurants were smaller and less structured, he said, it was more common for all employees to share tips because they typically shared responsibilities -- such as greeting guests, taking orders, and delivering food.

Today, however, the roles are spelled out more clearly and overlap less. And the law, he said, needed to be updated and more clearly define who is and who is not a server.

"People have been caught in this gray area of old law and old traditions and the new laws and new methods of service," he said. "I don't think it has been intentional. [The server] is the person you want to keep happy. It just goes against any logic that any people would cheat or deliberately take from the employees."

Liss-Riordan disagrees. She said she has a growing stack of cases against restaurants that she alleges had been doing whatever they could to subvert the system and take advantage of their employees.

In a similar case, Beverly Cooney of Arlington said in a lawsuit that she was fired in 2001 after she asked her former employer, the Weston Golf Club, about receiving a portion of the service charge. She contends that the club failed to distribute any accrued service charges to service employees.

Last week, Liss-Riordan, who also has cases pending against, among others, Excelsior, the Federalist, and Grill 23 & Bar, filed suit in Suffolk Superior Court against the Ritz-Carlton hotel in Boston for not distributing banquet service charges to servers.

"Everyone knew that the law meant only servers could receive gratuities," Liss-Riordan said. "But employers were trying to make arguments that they didn't understand that."

Attorney General Thomas Reilly decided to take a closer look at the tip laws in 1999 after several skycaps from Logan International Airport complained of being forbidden from keeping their tips.

At the time, the tip law didn't protect nonfood service workers. In the process of investigating possible changes, Reilly's office found more areas of uncertainty that needed to be better defined.

The new law protects airport baggage handlers, hairdressers, valets, and others, in addition to waiters, waitresses, and bartenders, who depend largely on tip income for their livelihood.

"It clarified the law for wait staff," said Daniel Field, chief of the attorney general's office's Fair Labor and Business Practice division, "but also for all types of tipped employees to make sure that directors and employers did not take the tipped money themselves."

Franco Ordoez can be reached at [fordonez@globe.com](mailto:fordonez@globe.com).

© Copyright 2004 Globe Newspaper Company.