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High court paves way for tips lawsuit to proceed

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The Hawai'i Supreme Court has ruled that hotel and restaurant employees may sue under a state consumer-protection law prohibiting employers from keeping any portion of gratuities without disclosing the practice to consumers.

The decision, published yesterday, will allow a lawsuit to proceed against Four Seasons hotels on Maui and the Big Island, and sets a precedent for similar cases against other Hawai'i hotels.

"We're happy with the decision," said Harold Lichten, a Boston attorney who argued the case before the court on behalf of the banquet workers.

The law requires that hotels and restaurants distribute service charges for food or beverage service to employees, or clearly disclose to customers if the service charges don't entirely go to employees. Failing to make such disclosure constitutes unfair competition under the law.

The law, enacted in 2000, was intended to strengthen wage and hour protection for

employees.

The court also dealt the plaintiffs, six banquet workers at the two hotels, a technical setback that will require them to amend their complaint.

The court ruled that plaintiffs failed to specify how the employers' tip practice constitutes unfair competition. Lichten said that will be easy to add.

The case is expected to return to U.S. District Court where it was filed in 2008, with Four Seasons fighting the case on other merits.

Four Seasons had sought to block the suit by arguing that employees couldn't sue under the law because legislators placed the act within an area of consumer protection statutes as opposed to labor and wage statutes.

The lawsuit, which seeks class-action status, is one of at least nine similar cases filed against major hotel companies in Hawai'i attempting to recover gratuities for hundreds of employees. Other cases seek compensation on behalf of consumers for gratuities they thought they had paid to service staff.

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