



Law suit filed over hotel's alleged tipping practices

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January 16, 2009 4:25 PM

YORK, Maine — Sisters who worked as function servers at the Union Bluff have brought a class-action lawsuit against the hotel that could have ramifications for other restaurants in the state.

The women filed the lawsuit based on a relatively new state law regarding tips and gratuities, according to their attorney, Hillary Schwab.

"Absolutely (it has ramifications) beyond the Union Bluff," said Schwab, of Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, P.C. in Boston. "This is a new law. Likely other employers are not aware of the new law."

The 2007 law says tips are the property of the service employee and are not to be shared with the employer.

Former server Joanne Hill, of York Beach, says the Union Bluff gave some of her tips to the events coordinator at the hotel.

It is a fact not disputed by the hotel's owner, Brent Merritt, who, through his attorney James Erwin, claims he knew of no wrongdoing. Merritt contacted the Maine Department of Labor and paid back gratuities to all servers, Erwin said on Friday. This was done prior to the lawsuit being filed, he said.

Schwab said this may be the first case to be brought under the new statute.

"Maine has one of the strongest laws in the country protecting service employees' gratuities," Schwab said in a released statement. "The Union Bluff Hotel, like many other hotels, restaurants and function halls around the state, is flouting this law and diverting the gratuities that were intended for its wait staff employees and using those gratuities to pad the hotel's revenue."

Hill and her sister, Noreen Horn, a function server at the Union Bluff, filed the lawsuit in York Superior Court in December.

Horn is still technically employed by the hotel, said Schwab, but hasn't been called in to work since the lawsuit was filed. Horn could not be reached for comment. Hill says she her employment was terminated after she complained to management about the tipping practice.

The complaint was made against Two Pars Inc., doing business as Union Bluff Hotel, on behalf of all employees who serve food and beverages at the York Beach hotel.

They are entitled to recover three times the amount of gratuities not paid to them, plus a portion of the minimum wage not given in base pay, according to Schwab.

"It appears to us they're looking for a windfall based on a technical statute based on tips and minimum wage," said attorney Erwin, of the law firm Pierce Atwood of Portland. "The Union Bluff became aware that it needed to change the way it calculated individual gratuities for its servers at weddings and similar functions. Working with the Maine Department of Labor, it corrected the practice, and paid the servers as directed by the state. The Union Bluff believes this lawsuit, which is being pursued by two unhappy former employees, is without merit."

The Union Bluff was unaware there was anything wrong with paying a small portion of tips to the events coordinator, which is a management position, Erwin said.

"It's always a challenge for employers to stay on top of and in compliance with changing rules of overtime, minimum wage, gratuities, that kind of thing," he said. "Sometimes employers will make mistakes."

The Department of Labor has no further issues with the Union Bluff, said Erwin.

The amount paid in restitution to servers was "less than \$200 per server," Erwin said.

Hill claims not enough was paid in restitution.

"The monies refunded in the payback are not accurate," she said.

"Our understanding is the violation is continuing," Schwab said.

Hill said she was employed as a server for banquet functions starting in September 2007.

She received \$3.50 an hour, with the rest of her earnings to be made in tips.

For the first five events she worked, she said, an 18-percent gratuity was added to the checks. For subsequent events it was 20 percent, she said.

"The bartender and wait staff, we pooled," said Hill. "If it was 20 percent, we'd divide that amount among the waitresses and bartenders."

Because the money was shared, said Hill, she didn't immediately realize some of it was being taken out prior to the servers splitting the tip. She figured out what was going on, she said, when she worked a breakfast function by herself and got less in tips than expected.

"I complained," she said. "I did a breakfast, I figured I would get \$160. I got a check for \$118. The events coordinator was taking 25 percent of the 20 percent. The remainder would go to the wait staff."

Hill calculates servers were receiving an estimated 13 percent in gratuities.

"The hotel should have paid (the events coordinator's) salary," said Schwab.

"I gave them every opportunity before I filed any complaint to rectify," Hill said. "(They) refused to do that."

When Hill brought the issue to the attention of management in July 2008, she was terminated, she said.

Servers were never told they were getting less than the full gratuity, said Hill. She was the assistant events coordinator for awhile, she said, and in talking to new servers, "I was told to tell them they would get 20-percent gratuity. There was no good-faith disclosure on how it was to be paid."

Hill and Horn are asking for a jury trial.

Erwin expects to file an answer to their complaint in February, he said.

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