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## Harvard Club of Boston Sued by Waitstaff

The Harvard Club of Boston is being sued by its waitstaff for alleged violations of the Massachusetts tips law. At the request of three employees, attorney Shannon Liss-Riordan '90, J.D. '96, filed a class-action lawsuit against the club on November 10; she has won numerous such cases in the past, including suits against Hilltop Steak House, Starbucks, and Northeastern University (a case in which the workers earned high base salaries).

At issue is the distribution of the proceeds from a surcharge the club levies on its members “in lieu of a gratuity” for meals and functions, as well as the sharing of a holiday gift fund to which club members make voluntary contributions. None of the surcharge has ever been given to employees; the club says it helps pay the club’s operating expenses. (The [club](#) [3], which operates from a main clubhouse on Commonwealth Avenue and a second location in the downtown financial district, is completely separate from Harvard University, but by charter, its members must be Harvard alumni. Graduates of certain other institutions may become associate members.)

According to the club, the surcharge acts as a usage-based fee to fund general operations, complementing member dues, and its staff are told when hired that the club is a no-tipping establishment, so they have no expectation of receiving gratuities.

Massachusetts law, however, turns on the expectations of the *customer*, rather than the *employee*. In an [article about the lawsuit that appeared in the \*Boston Globe\*](#) [4], all three club members quoted were under the impression that the surcharge they had been paying for years went to workers. A *Globe* editorial [5] stated: “It’s one thing if a restaurant, bar, or swanky club charges a fixed service fee to keep its waiters and bartenders from being stiffed by stingy tippers. It’s quite another if the good will customers feel toward their servers...benefits someone else.”

State law does allow employers to impose a house or administrative fee, such as a “usage” fee, but only by written description that “informs the patron that the fee does not represent a tip or service charge for wait staff employees, service employees, or service bartenders.”

Liss-Riordan, who represents the plaintiffs, points out that the club’s member handbook refers to the surcharge as “in lieu of a gratuity.” The amount of the surcharge, 17 percent (20 percent for banquets), further adds to the impression that it is in lieu of a tip, she asserts.

The second point of contention raised by the lawsuit concerns the club’s holiday gift fund, which, according to the lawsuit, is shared with hourly staff at a rate of \$60 per year of service. At least some non-hourly staff

also share in the gift fund, according to the club, but the formula for that distribution has not been divulged and has been a point of contention in the club's negotiations with the union that represents club workers; months before the current lawsuit alleged that some of the gift fund is divided among club managers (which, if true, would be a clear violation of the state's tipping law), the National Labor Relations Board's general counsel had filed a federal complaint against the club for bad-faith bargaining, in part over its refusal to reveal either the amount or disposition of those member-donated gifts.

Beyond the legal dimension of the conflict is the question of whether the employees are fairly compensated. In a November 16 letter to members, club president Nicholas J. Iselin '87 made the case that they are: "[W]e offer servers higher wages (\$16-\$20 per hour) than are the norm in the hospitality industry, as well as health insurance, paid holidays, sick leave and vacation time, retirement benefits, and a stable work schedule." Commenting through a spokesperson, the club said that workers receive two to four weeks of paid vacation, 10 or more paid holidays, and three weeks of sick leave.

But Dana Simon, organizing director of Local 26 of UNITE HERE, the union that represents the club's 240 hospitality workers, disputes that picture; he says most workers earn between \$16 and \$18 an hour. (In a separate interview, Liss-Riordan said that amount is less than hospitality workers earn at comparable employers in Boston and Cambridge, once gratuities are included.) The highest wage the club pays is \$18.78 per hour for a second cook, says Simon, "which is usually someone with an associate's or bachelor's degree from a cooking college." Eighty-two of the club's workers are ineligible for paid sick days, paid holidays, vacations, pension, and other benefits, according to Simon; a larger number are excluded from health benefits. Healthcare coverage for 57 of the club's employees (with 76 dependents among them) is taxpayer-subsidized under the state's mandatory insurance law, according to [2009 state records of employers who have 50 or more employees using public assistance](#) <sup>16</sup> (appendix five). More than 100 of the employees earn less than \$10,000 a year. Of the remainder, most earn more than \$10,000 but less than \$40,000, so even for higher earning, longer-service employees, says Simon, the \$2,500 annual family deductible for health insurance offered through the club is a significant proportion of income. Furthermore, there is no paid sick leave in the first year; it rises to five days after one year of service and 10 days after two years.

In negotiations with the union, says Simon, management has proposed freezing hourly wages for the next six years; eliminating the retirement plan after June 2011 and replacing it with a worker-funded 401(k) plan with no employer contribution; and taking away three paid holidays for current workers, as well as six paid holidays (including Columbus Day, Veterans Day, and the day after Thanksgiving) for future employees. "Tell people what they are," says Simon, "if you are proud of your benefits." He also disputes the assertion that the club offers a more stable schedule to its workers. A week's schedule that begins on Monday is posted the previous Friday, he says.

Whatever the outcome of the labor negotiations, the stakes of the lawsuit are high. Since 2008, any violation of the state's wage and hour laws, including those covering tips, mandates payment of triple damages as well as costs and attorney fees in successful cases. Previously, state judges exercised discretion over the awards, typically assessing treble damages only in cases of willful violation.

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