

Court revives SF hotel workers' suit over tips

By [Bob Egelko](#)

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A federal appeals court revived a lawsuit Thursday by food and beverage workers at the **Hilton Hotel** on Union Square in San Francisco who said they've been cheated out of some of their tip money at dinners and banquets.

The hotel adds a "service charge," typically about 20 percent, to customers' bills. According to the lawsuit, the hotel keeps a portion of those funds for itself, then apportions 25 percent of the remaining funds to management staff and the rest to workers who serve the customers.

The suit, filed in January 2014, contended service charges are actually "gratuities," or tips, which under California law belong entirely to the workers. They seek payments dating back four years before the suit was filed.

“They look like gratuities to customers, the amount of the usual gratuity,” said **Shannon Liss-Riordan**, a lawyer for the food and beverage workers. “Customers will be unlikely to pay an additional tip,” she said, because they’re led to believe the workers are getting the extra charges.

U.S. District Judge **Jeffrey White** of Oakland dismissed the suit, saying the workers’ union contract allowed the hotel to apportion the funds. But the Ninth **U.S. Circuit Court of Appeals** in San Francisco said Thursday that the charges were governed by state law, not the union contract.

The suit “requires a court to determine only whether the charges associated with the events at issue are gratuities under California law and, if so, whether Hilton handled them lawfully,” the three-judge panel said.

Liss-Riordan said courts in other states, including Hawaii and Massachusetts, have ruled that service charges are gratuities, but the issue hasn’t been resolved yet under California law. That question will be decided by a trial judge, though the appeals court didn’t determine whether the case belonged in White’s court or a state court.

The hotel company declined to comment on the ruling.

Bob Egelko is a San Francisco Chronicle staff writer. Email: beigelko@sfchronicle.com Twitter: [@egelko](https://twitter.com/egelko)