

**Labor & Employment Alert**  
**April 2015**

**Massachusetts Supreme Judicial Court Issues Decision Regarding  
No-Tipping Policies**

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On April 10, 2015, Massachusetts' highest court issued an important ruling for service industry employers, clarifying employer obligations with regard to "no-tips" policies under Massachusetts law. The Court held: (1) "no-tips" policies are permissible, (2) employers are allowed to keep any money left as a tip when a no-tips policy is clearly communicated to customers, and (3) employers are not allowed to keep any money left as a tip when the policy is not clearly communicated to customers.

The plaintiffs in this case were a group of service employees at a few dozen Dunkin Donuts franchises all owned by defendant Constantine Scivanos. The plaintiff employees were paid hourly at or above minimum wage, and did not rely on tips for their pay. In 2003, Mr. Scivanos began instituting a no-tips policy at the stores in question. To enforce the policy, the stores had signs posted saying employees did not accept tips, the employees were instructed to refuse tips and inform customers of the policy who tried to leave tips, and the employees were subject to discipline for accepting tips. Before the case was filed, employees were instructed as part of the no-tips policy to put any money left as a tip in the cash registers. After the case was filed, the stores placed "abandoned change" containers near the cash registers for customers to leave small change that another customer could use (similar to a take a penny leave a penny containers), and instructed employees to place the received money from a customer in the abandoned change cups. The plaintiffs asserted in their original complaint that the defendants' no-tipping policy, and the policy of placing money customers left as "tips" in the cash register, violated the Tips Act. After the Defendant instituted the "abandoned change" policy, the plaintiffs filed an amended complaint asserting that this new policy also violates the Tips Act.

Part way through the litigation process, a superior court judge certified three legal questions to the Supreme Judicial Court in order to clarify employer and employee rights under the Massachusetts Tips Act. The Tips Act provides that "[n]o employer or other person shall demand, request or accept from any wait staff employee, service employee, or service bartender any payment or deduction from a tip or service charge given to such wait staff employee, service employee, or service bartender by a patron." The Court held that the Tips Act does not prohibit no-tips policies, and further that when the employer clearly communicates this policy to customers, the employees are not entitled to any tips left by customers. Customers, the Court explained, could not possibly have a reasonable expectation that employees would receive the

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money left if there was clear communication of the no-tips policy. However, if an employer does not clearly communicate the no-tips policy, employees are legally entitled to any tips left by customers.

The Court provided helpful guidance in a footnote at the end of the opinion: “A clear communication of the no-tipping policy could be accomplished through the posting of signs such as those conveying that employees may not accept tips. In addition, employers could instruct wait staff employees to convey to customers orally the existence of a no-tipping policy, and could provide training regarding the content of the communication, as well as when during the various points of interaction with a customer the information should be conveyed.”

*Attorney Lena-Kate Ahern is responsible for this client alert. If you have any questions about this issue, please contact the attorney responsible for your account, or call (617) 479-5000.*

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