

Duff on Hospitality Law

Tom Douglas Settlement Highlights a \$2.4 Million Technicality: Three Steps to Help Avoid Potential Costly Litigation Related to Washington's Automatic Service Charge Laws

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A recent settlement between Seattle chef Tom Douglas and his restaurant employees highlights the potentially costly technical requirements of Washington's automatic service charge laws for hospitality businesses.

Washington law allows all "employers" that provide food, beverage, entertainment or portage services (e.g., restaurants, caterers, convention centers and hotels) to impose an automatic service charge on customers for such services. Sounds fairly straightforward, right? Not so fast. This law has two technical, yet important, requirements that employers must follow:

1. Employers must disclose the automatic service charge to customers on both an itemized receipt *and* in any menu provided to the customer; and,
2. Employers must disclose how much of the automatic service charge is payable directly to the *employee(s) serving the customer* (e.g., the servers).

So where did Tom Douglas' restaurants go wrong? They didn't adequately disclose how much of the automatic service charge was payable directly to the employees serving the customer.*According to the Notice of Class Action Settlement, the relevant automatic service charge disclosures read, "20% service charge: 100% of these funds are distributed to our team in the form of wages, sales commissions, benefits and revenue share." [The Seattle Times](#) reported that restaurant employees argued the disclosure wasn't specific enough to inform customers that servers received, on average, only about 14 percent of this automatic service charge. Additionally, several of these restaurants also did not provide customers with an opportunity to leave an additional tip on top of the service charge. As a result, front-of-the-house servers argued they did not receive as much gratuity as they perhaps otherwise would have had the automatic service charge disclosures been more specific.

So, if you are a Washington business in the hospitality industry that has either already implemented automatic service charges or is considering doing so, we recommend taking *the three steps below to help*

avoid potential costly litigation:

1. **Be specific.** If you are imposing an automatic service charge, indicate what percentage will go directly to the employees serving the customer and what percentage will be distributed to back-of-the-house or other employees.
2. **Inform the customer.** List the specific automatic service charge disclosure on any menus given to the customer *and* on itemized receipts. In fact, it doesn't hurt to over disclose the business' use of an automatic service charge by listing it wherever prices are indicated-not just on menus and receipts.
3. **Give customers the choice.** Provide customers with an option to leave an additional tip, if they wish. Since employees would likely be the people initiating any potential litigation, decrease this risk by increasing the likelihood servers receive a satisfactory amount of gratuity.

*Please note the \$2.4 million settlement pertains to two allegations: one related to Washington's automatic service charge law and the other related to Washington's paid rest/meal break law. Tom Douglas' restaurants did not admit to fault for any of the above claims as part of the settlement terms.

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