

Starbucks' Tip Pooling Practices Found to Violate Massachusetts Law

Article By:

Jennifer R. Dixon

On November 9, 2012, the United States First Circuit Court of Appeals affirmed the Massachusetts district court's summary judgment granting the plaintiffs, comprised of a number of former Starbucks baristas, class status and found that Starbucks' policy of pooling and sharing tips among shift supervisors and baristas violated Massachusetts' Tips Act, Mass Gen. Laws ch. 149, s. 152A. After discovery was conducted on damages, the district court entered judgment in favor of the plaintiff class in the aggregate amount of \$14.1 million.

At the crux of the appeal was whether Starbucks' shift supervisors are "wait staff employees" under the Act since the Act states that wait staff employees are not required to share tips with anyone who is not a wait staff employee. The Tips Act defines "wait staff employee" as persons who serve beverages or prepared food to patrons, or who clear patrons' tables, and who work in a place where prepared food or beverages are served. The definition also contains the requirement that the employee have "no managerial responsibility."

The plaintiffs contended that the baristas were wait staff employees, but that shift supervisors were not, and therefore, shift supervisors should not have shared in tips with the baristas. Because the first two prongs of the statutory definition unquestionably applied to both classes of employees, the question for the court became whether the shift supervisors had "managerial responsibility," as contemplated by the Tips Act.

Starbucks contended that the shift supervisors, who report to store managers and assistant managers, had supervisory duties over the baristas, but no managerial responsibility. The plaintiffs asserted that the job descriptions of shift supervisors included managerial tasks, and that, under the Tips Act, any level of managerial responsibility, no matter how slight, was sufficient to exclude the shift supervisors from the definition of "wait staff employee." It didn't help Starbucks that, in 2004, upon the adoption of the current version of the **Tips Act**, the Massachusetts Attorney General issued an advisory opinion conspicuously stating that "shift supervisors . . . do not qualify as wait staff employees." Advisory 2004/3, An Advisory from the Attorney General's Fair Labor and Business Practices Division on an Act Protecting the Wages and Tips of Certain Employees.

Starbucks endeavored to raise numerous creative arguments, which the First Circuit rejected "out of hand." Ultimately, the First Circuit agreed with the plaintiffs' construction, and affirmed the district

court's judgment against Starbucks.

While Starbucks is the loser of this fight to the tune of \$14 million, at the end of the day, the ultimate losers will likely be the very same hourly service employees who brought this suit in the first place. This case is likely to signal the demise of the "community tip jar," which customers undoubtedly understand will be shared by those behind the counter regardless of their level of supervisory responsibility. Whether the Tips Act intentionally or unintentionally impacts the community tip scheme, because of this suit, a significant income supplement for these hourly workers will likely dry up as lawyers for establishments throughout Massachusetts (including Dunkin' Donuts, which outnumbers Starbucks 10 to 1 in Massachusetts) advise their clients that the risk of the community tip jar is not worth the reward. Certainly, the workers behind the counter serving their coffee would disagree.

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