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An Act To Clarify the Use of Tips in Payment of Service Employees

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §663, sub-§8, as enacted by PL 1967, c. 466, §4, is amended to read:

8. Service employee. "Service employee"; means any employee engaged in an occupation, such as waiters, waitresses, bellhops, counter personnel and bartenders who serve customers, in which the employee customarily and regularly receives more than \$20\$30 a month in tips.

Sec. 2. 26 MRSA §664, sub-§2, as enacted by PL 1995, c. 305, §1, is amended to read:

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. Service employees may volunteer to pool their tips to be split among other service employees or may volunteer to share a part of their tips with other employees who do not generally receive tips directly from customers. Tips that are automatically included in the customer's bill or that are charged to a credit card must be given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.