

SEPTEMBER 28, 2023 | STATE & LOCAL TRENDS

DC Attorney General Issues a Business Advisory Demystifying Restaurant Service Fee Compliance Requirements

Last month, Attorney General Brian L. Schwalb issued a new advisory explaining restaurants' legal obligation to adequately disclose service fees. Under the DC Consumer Protection Procedures Act (CPPA), restaurants are required to disclose fees, including service fees, in a timely, prominent, and adequate manner. This new advisory includes examples of compliant and non-compliant fee disclosures according to the CPPA.

According to AG Schwalb, the new advisory was motivated by diners expressing concerns about being surprised by unexpected fees and surcharges at the end of their meals. As well as that, the advisory indicated that diners have also expressed confusion about how restaurants are using service fees, especially whether restaurants distribute the fees as tips to servers or retain the fees to cover operational expenses.

Service Fee Language

The advisory emphasized that conclusory or general statements indicating service charges or service fees would not comply with the CPPA.

For example, the following statement would not comply with the CPPA:

A 22% service charge is included on every tab and will help to support our staff.

Whereas the following statement would comply with the CPPA:

A 22% service charge is included on every tab. 15% is distributed directly to service workers on top of their base wages, and the remaining 7% is used to help pay for our staff costs, such as base wages, health insurance, etc. You may choose to leave an extra tip.

Timely and Prominent Disclosure

The advisory also clarifies that restaurants must disclose the existence and amount of fees *before* diners place their orders. In addition, the advisory explains that restaurants cannot bury fees, or make obscure them in smaller print. The advisory suggests that a good rule of thumb is for restaurants to communicate service fees in the same way that they communicate their prices.

Employer Takeaways

Using this guidance, DC restaurants should evaluate the substance, process, and prominence of their service fee language. Where restaurants are found to be in violation of the CPPA, initial warnings may be issued as a precursor. However, it's important to note that the Office of the Attorney General retains the authority to pursue remedies that encompass consumer refunds, imposition of penalties, and the enforcement of corrective actions upon these businesses.