

OCTOBER 16, 2015 | WAGE & HOUR COMPLIANCE

Hospitality Group Nixes Tipping at its Restaurants — Is This the Wave of the Future?

It is no secret that during the last few years, we have seen a surge in class action lawsuits alleging a variety of improper tip practices against restaurants and other employers in the hospitality industry. These lawsuits are typically brought under both the federal Fair Labor Standards Act ("FLSA"), which governs which employees are eligible to share in tips, as well as analogous state and local laws. These laws are extremely nuanced and complex, with violations often resulting in significant liability.

For these and other reasons, on October 14, 2015, Danny Meyer's Union Square Hospitality Group  announced that starting in November, it will begin eliminating tips at each of its thirteen full-service venues, and implement a new program called "Hospitality Included." While several high-end restaurants in New York City and Los Angeles have already eliminated tipping the past few years, this new program is extremely significant, as it is the first time a major American restaurant group will institute a zero-gratuity policy. You can read more about Danny Meyer's program [here](#).

The "Hospitality Included" program will differ from the traditional restaurant experience in several notable ways, including the following: (i) many prices on the menu will be markedly higher than they previously had been; (ii) menus will carry a note informing diners of the new policy; (iii) the only supplemental charge on the itemized bill will be for sales tax; and (iv) there will be no space on the guest's check for leaving a tip — rather there will only be a line for the patron's signature.

In a letter posted on his company's website, Meyer wrote the following:

"We believe hospitality is a team sport, and that it takes an entire team to provide you with the experiences you have come to expect from us. Unfortunately, many of our colleagues – our cooks, reservationists, and dishwashers to name a few – aren't able to share in our guests' generosity, even though their contributions are just as vital to the outcome of your experience at one of our restaurants."

Meyer is referring to the FLSA's rules that permit "front of the house" employees to receive tips and participate in valid tip pooling arrangements, while prohibiting "back of the house" employees such as dishwashers, chefs and cooks typically from receiving tips or being part of a valid tip pooling arrangement. By completely eliminating tipping and paying all workers hourly rates of at least the full minimum wage (without utilizing the tip credit),

Meyer can avoid the complicated tip pooling laws that trip up so many employers in the hospitality industry. As an additional bonus, Meyer can significantly increase the compensation of “back of the house” employees and thereby allow them to share in the rewards of good overall service.

The overall effect of this new program on “front of the house” staff, such as waiters, bussers, bartenders, and sommeliers is less clear. Historically, these employees earned the lion’s share of their pay through tips. Thus, although they will now earn at least full-minimum wage and thus will see an increase to their hourly wage, losing out on the opportunity to earn tips could result in a decrease to their overall compensation. It will be interesting to see how much Meyer increases his menu prices to ensure that his wait staff does not get shortchanged due to the zero-gratuity system.

Depending on the success of this new “Hospitality Included” program, zero-gratuity policies may become more commonplace at fine-dining establishments in major metropolitan areas, as such restaurants typically have established clientele that will not be dissuaded by higher prices. At this point, however, it is unlikely that other sit-down restaurants will adopt this approach and risk alienating both customers and their own wait staff. Nonetheless, there is no doubt that the hospitality industry as a whole will be closely watching and attempting to learn from Danny Meyer’s new program. In the months to come, we will be sure to update you with further developments on this issue.