

HOUSE No. 4324

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the pooling of tips..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Subsection (a) of section 152A of chapter 149 of the General Laws as
2 appearing In the 2008 Official Edition is hereby amended by inserting before the definition of
3 “Wait staff employee” the following two definitions:-

4 “Managerial responsibility”, an employee shall be considered to have managerial
5 responsibility if said employee (a) works in an establishment where fellow employees are paid
6 less than minimum wage and whose earnings are largely based on tips pursuant to MGL c. 151,
7 Section 7, (b) regularly supervises two or more other employees, (c) has management as the
8 primary duty of the position in a capacity greater than mere supervision, (d) has input into the job
9 status of other employees, including but not limited to interviewing, selecting, and training
10 employees; setting rates of pay and hours of work; maintaining production or sales records
11 (beyond the merely clerical); appraising productivity; handling employee grievances or
12 complaints, or disciplining employees; determining work techniques; planning the work;
13 apportioning work among employees; determining the types of equipment to be used in
14 performing work, or materials needed; planning budgets for work; monitoring work for legal or

15 regulatory compliance; providing for safety and security of the workplace, (e) is paid a set hourly
16 wage or salary, excluding any tips or bonuses or nonmonetary benefits, which is equal to or
17 greater than the then applicable minimum fair wage as defined under MCL c. 151, Section 1,
18 plus one hundred (100%) percent of said minimum fair wage, and (f) has the direct authority to
19 hire and fire without additional approval.

20 “Service employee”, a person who (a) works in an occupation in which employees
21 customarily receive tips or gratuities, and who provides service directly to customers or
22 consumers, but who works in an occupation other than in food or beverage service, and who has
23 no managerial responsibility, (b) works in a restaurant or other place where prepared food or
24 beverages and has minimal supervisory authority, (c) serves beverages or prepared food directly
25 to patrons, or clears patrons tables.

26 SECTION 2: Said section 152A of said chapter 149, as so appearing, is hereby further
27 after the word “demand” , in line 38, the following words:- ,and no employer or employee with
28 managerial responsibility as defined in this section shall demand.

29 SECTION 3: Said section 152A of said chapter 149, as so appearing, is hereby further
30 amended by inserting after the word “or”, the first time it appears , in line 45, the following
31 words:-

32 employee with managerial responsibility as defined in this section

33 SECTION 4: Said section 152A of said chapter 149, as so appearing, is hereby further
34 amended by inserting after the word employees , in line 56, the following words:-

35 and in no way shall be remitted to an employee with managerial responsibility as defined
36 in this section.

37 SECTION 5: Said section 152A of said chapter 149, as so appearing, is hereby further
38 amended by inserting after the word employer , in lines 63 and 64, line 69, and in line 76 the
39 following words:-

40 or employee with managerial responsibility as defined in this section

41 SECTION 6. This act shall take effect as of June 10, 2004.