

6299

I N S E N A T E

January 24, 2012

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring notice from employers to customers of service charges and administration fees that are not distributed to employees as gratuities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 196-d of the labor law, as added by chapter 1007 of
2 the laws of 1968, is amended to read as follows:
3 S 196-d. Gratuities. No employer or his agent or an officer or agent
4 of any corporation, or any other person shall demand or accept, directly
5 or indirectly, any part of the gratuities, received by an employee, or
6 retain any part of a gratuity or of any charge purported to be a gratui-
7 ty for an employee. This provision shall not apply to the checking of
8 hats, coats or other apparel. Nothing in this subdivision shall be
9 construed as affecting the allowances from the minimum wage for gratui-
10 ties in the amount determined in accordance with the provisions of arti-
11 cle nineteen of this chapter nor as affecting practices in connection
12 with banquets and other special functions where a fixed percentage of
13 the patron's bill is added for gratuities which are distributed to
14 employees, nor to the sharing of tips by a waiter with a busboy or simi-
15 lar employee. AN EMPLOYER THAT IMPOSES A MANDATORY SERVICE CHARGE,
16 ADMINISTRATIVE FEE, OR ANY OTHER SIMILAR CHARGE WHICH IS NOT DISTRIBUTED
17 TO EMPLOYEES AS GRATUITIES MUST PROVIDE WRITTEN NOTICE TO CUSTOMERS ON
18 THE CHECK OR INVOICE THAT THE CHARGE IS NOT A GRATUITY AND WILL NOT BE
19 DISTRIBUTED TO EMPLOYEES WHO PROVIDED SERVICE TO GUESTS, OR IF ONLY A
20 PORTION OF THE CHARGE IS DISTRIBUTED AS GRATUITIES, THE PORTION DISTRIB-
21 UTED AS GRATUITIES MUST BE IDENTIFIED. THE STATEMENTS SHALL USE ORDINARY
22 LANGUAGE READILY UNDERSTOOD AND SHALL APPEAR IN A TYPE SIZE SIMILAR TO
23 SURROUNDING TEXT, BUT NO SMALLER THAN TWELVE POINT TYPE. NOTWITHSTAND-
24 ING THE FOREGOING, PRIOR TO THE EFFECTIVE DATE OF THIS SENTENCE, ANY
25 MANDATORY SERVICE OR ADMINISTRATIVE CHARGE, OR ANY MANDATORY FEE,
26 IMPOSED BY AN EMPLOYER AS PART OF A BANQUET SERVING TWENTY OR MORE
27 GUESTS SHALL NOT BE DEEMED A GRATUITY OR CHARGE PURPORTED TO BE A GRATU-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 ITY, AND SHALL NOT FORM THE BASIS OF ANY LIABILITY UNDER THIS SECTION,
2 ANY OTHER PROVISION OF THIS CHAPTER OR ANY REGULATIONS IMPLEMENTED
3 DESPITE THE ABSENCE OF SUCH DISCLOSURE OR AS A RESULT OF ANY REPRESENTEN-
4 TATION MADE BY ANY EMPLOYER OR HIS AGENT. A BANQUET IS AN OCCASION
5 WHERE FOOD OR BEVERAGE IS SERVED.

6 S 2. This act shall take effect on the thirtieth day after it shall
7 have become a law.