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Tipping Controversies Challenge Tradition

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Several New York City restaurants were named in a lawsuit on July 18 over deceptive tipping practices, including Applebee's, Olive Garden, and Red Lobster. The \$5.5 billion class action lawsuit is over the restaurants' decision to include an added gratuity and tip line on the bills.



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The automatic gratuity is optional and meant as a convenience for the guests, says the restaurants. However, many guests don't notice, and add an additional tip to the included 18 percent.

In New York, it is against the law to add an automatic surcharge to a party of fewer than eight people. Ted Diamond, who brought the lawsuit, reportedly wants to see affected diners receive compensation of \$50 per check. The lawsuit could impact around 2,000 restaurants.

Totally escaping the tipping confusion is Sushi Yasuda, a restaurant in New York that turned heads last month with the announcement that they would no longer accept tips. The restaurant would be adopting the Japanese tradition of no tipping, and instead would salary the waitstaff.

Carolyn Richmond, from Fox Rothschild and counsel member to the New York City Hospitality Alliance, says eliminating tipping is not a final solution.

"[No tipping] is not necessarily a bad idea," Richmond says. "It's great if you pay above minimum wage and the staff doesn't need tips. But it's difficult to get rid of the custom of tipping."

Even with the signage explaining the no-tipping policy, Sushi Yasuda has still encountered patrons leaving tips.

"Now they're back to square one: What to do with the tip? It's a macro problem of who shares in the tip." Richmond says.

Should the restaurant absorb the money as extra revenue? Should it be shared among employees, and if so, which employees are entitled to the tip?

Jay Porter, former owner of The Linkery in California (which closed in

July), eliminated tipping in his restaurant for over five years, and donated the money left on the table to a charity of the month.

“Not accepting tips was a huge competitive advantage for us,” Porter says. “By removing from the dining room that somewhat parasitic business enterprise—the independent transaction between the server and the guest—we were able to focus entirely on delivering great service, and the guests were able to focus on enjoying the food and hospitality. The servers made more money, the guests had better experiences, and the restaurant operated at a higher level.”

Tip pooling (<http://www.fsrmagazine.com/content/pool-or-not-pool>) is another practice that attempts to eliminate the competitive relationship between servers.

However, the law has a hard time distinguishing who is allowed to receive tips. An illegal tip-pool lawsuit in Aspen, Colorado, was settled by a federal judge on June 24, where a bus boy was suing a fine-dining restaurant for running an illegal tip pool. The settlement was not disclosed. Another federal court is now slated to decide the 2008 New York Starbucks tip lawsuit, deciding whether it is legal for shift managers to share in the tip pool. A similar lawsuit in Massachusetts ruled that Starbucks couldn’t include shift managers in tip pools.

Traditionally, tips go to those involved in direct customer service, and who spend 80 percent of their time in the dining room, explains Richmond, but it varies state to state. Tips are not allowed to go to agents of the owner, so managers are not allowed to share in the tip pools.

Richmond cites archaic laws as the root of the problem. “We have different needs than in 1938. The wage and hourly laws need to be changed. We need A-to-Z reform.”

“Not being able to tip share with the back of the house realistically needs to be looked at,” she says. “If you are served a great meal on a dirty dish, it affects the ability to have a great meal.”

Porter says by eliminating tipping, his restaurant operated on a higher level. “I would definitely do it again, as I think it’s a superior business model for any restaurant with a team of more than a few people.”

By Kirsten Ballard

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I come from the food and beverage industry. I agree that servers and bartenders focus so much on tips that they forget to provide great customer service. In addition, it's come to the point that servers and bartenders expect to be tipped regardless of their service. However, I believe that removing tips could affect many businesses, especially the mom and pops since they can afford to pay a higher salary to their employees. Businesses who can afford to pay their servers and bartenders a salary could benefit from a tip pool or completely removing tips.

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