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## Editorial: Connecticut Needs a Law on Tips

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Federal law allows a restaurant to force its servers to relinquish their tips, including to management itself. The restaurant just has to pay its servers the full minimum wage, rather than the lower service wage.

You probably leave about 20 percent. Maybe less if the service was slow. Maybe more if you received extraordinary service—or if you used to work in a restaurant. Whatever tip you leave, though, you probably expect that the tip actually goes to the person who served you.

You might be right. You might be wrong. That is because, despite having one of the highest state minimum wages in the country, Connecticut has no law establishing the legal status of gratuities.

But if a tip is an offering from a customer to a server in recognition of the service provided, you might ask, how could it not belong to the person who provided the service? To understand the answer to that question, a little background is necessary.

Under federal and state law, restaurants may pay their servers the so-called service minimum wage, rather than the higher regular minimum wage, so long as the servers ultimately earn at least the regular minimum wage once their tips are included. (In Connecticut, the service minimum wage is \$5.78; the regular one \$9.15.) Restaurants must jump through a number of hoops to pay this lower wage. One hoop, mandated by federal law, is that servers cannot be forced to pool their tips with restaurant employees who do not also receive tips. If they are, then servers must be paid the full minimum wage, rather than the service one.

Now, back to our initial question. What prohibits a restaurant from simply keeping its servers tips for itself? Under federal law, the answer may well be: nothing. According to a 2010 decision from the (usually liberal) U.S. Court of Appeals for the Ninth Circuit, *Cumby v. Woody Woo*, federal law allows a restaurant to force its servers to relinquish their tips, including to management itself. The restaurant just has to pay its servers the full minimum wage, rather than the lower service one. That means, if a restaurant wants, it can stop the tip you left for your server from ever getting to his or her pocket.

Although federal law creates no impediment, is there nonetheless some state law that prohibits this practice? Probably not. The common law is no help, as the ownership of tips is not sufficiently clear to support a claim for conversion. And Connecticut's wage statute is no help, because our Supreme Court held in *West v. Egan* (1955) that tips do not qualify as "wages."

Simply put, there is no law in Connecticut mandating that the tip you give your server will end up with him or her at the end of the night. The legislature should change that.

Fortunately, many of our sister states have already passed laws specifically addressing this issue, any one of which would be a useful model. Massachusetts, for example, prescribes that: "No employer or other person shall demand, request or accept from any wait staff employee, service employee, or service bartender any payment or deduction from a tip or service charge given to such wait staff employee, service employee, or service bartender by a patron."

As this law suggests, it is more than just restaurant servers (and their patrons) who have a stake in this issue. Bellhops, baristas, hair stylists, massage therapists, taxi drivers—all of these "service employee[s]" (and many more) earn a good portion of their compensation from tips. And companies have reaped big profits from the tips of these sorts of employees. The Massachusetts tip law alone, for example, has led to a \$14.75 million settlement for hundreds of service providers at Canyon Ranch Spa in the Berkshires, who were denied tips under the spa's "service charge" policy, and a judgment of more than \$14 million for Starbucks baristas, who were forced to share their tips with Starbucks management.

Connecticut should not stand for this sort of managerial abuse. We owe it to the tipped workers of this state to make Connecticut law clear, and to make sure it is the workers who get to go home with the money their services earned.

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