HOW DO THE WAGE ACTS APPLY TO SERVERS?

If you are a server at a restaurant, you are entitled to be paid at least minimum wage for each hour that you work. The employer is entitled to a credit for any amounts of tips you earn towards the minimum wage payment. In other words, the employer is required to pay you $2.13 an hour, but may take a credit of up to $5.12 an hour for tips that you make to satisfy the Federal Minimum Wage. The State of Rhode Island requires that servers be paid $2.89 an hour and the Commonwealth of Massachusetts require that servers be paid $2.63 an hour. Accordingly, in Rhode Island, the employer is entitled to take up to $5.11 an hour toward minimum wage in an tip credit and in Massachusetts up to $5.37 an hour toward minimum wage. If you don’t make minimum wage for each hour that you work, under both State and Federal Law, than the employer is required to make up the difference.

In order to claim the tip credit, the employer is required to maintain a form or other record which states the amount of tips that you make as a server for every shift that you work. A tipped employee is generally someone who makes more than $30.00 a month in tips.

WHERE DOES IT GO WRONG WITH TIPPED EMPLOYEES

An employer can be in trouble with the Department of Labor and State Entities when:

1. An employee does not receive sufficient tips to make up the difference between the direct (or cash) wage payment and the minimum wage and the employer fails to make up the difference.
2. Where an employee receives tips only and is paid no cash wage, the full minimum wage is owed.
3. Where an employer makes deductions for walk-outs, breakage, or cash register shortages which reduce the employee’s wages below the minimum wage, such deductions are illegal. Where a tipped employee is paid $2.13 per hour in direct (or cash) wages and the employer claims the maximum tip credit of $5.12 per hour, no such deductions can be made without reducing the employee below the minimum wage (even where the employee receives more than $5.12 per hour in tips).
4. Where a tipped employee is required to contribute to a tip pool that includes employees who do not customarily and regularly receive tips, the employee is owed all tips he or she contributed to the pool and the full $7.25 minimum wage.

OVERTIME AND THE TIPPED EMPLOYEE

Once a tipped employee works more than forty hours in a week, they are entitled to 10.88 an hour. The employer may not take a larger tip credit toward that sum than he could for a normal hour. In other words, the employer must pay the employee at least $5.76 an hour.