

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1543

H.P. 1068

House of Representatives, March 20, 2007

### An Act To Clarify the Use of Tips in Payment of Service Employees

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Submitted by the Department of Labor pursuant to Joint Rule 204.  
Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative SIMPSON of Auburn.  
Cosponsored by Senator BARTLETT of Cumberland and  
Representatives: BURNS of Berwick, CLARK of Millinocket, DUPREY of Hampden,  
HANLEY of Gardiner, HOTHAM of Dixfield, MOORE of Standish, PILON of Saco, Senator:  
SULLIVAN of York.

**1 Be it enacted by the People of the State of Maine as follows:**

2       **Sec. 1. 26 MRSA §663, sub-§8**, as enacted by PL 1967, c. 466, §4, is amended to  
3       read:

4       **8. Service employee.** "Service employee"; means any employee engaged in an  
5 occupation, such as waiters, waitresses, bellhops, counter personnel and bartenders who  
6 serve customers, in which he the employee customarily and regularly receives more than  
7 \$20 \$30 a month in tips.

8       **Sec. 2. 26 MRSA §664, sub-§2**, as enacted by PL 1995, c. 305, §1, is amended to  
9       read:

2. **Tip credit.** An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

18 The tips received by a service employee become the property of the employee and may  
19 not be shared with the employer. Service employees may volunteer to pool their tips to  
20 be split evenly among other service employees or may volunteer to share a part of their  
21 tips with other employees who do not generally receive tips directly from customers.  
22 Tips that are automatically included in the customer's bill or that are charged to a credit  
23 card must be given to the service employee, except that if the employer must pay the  
24 credit card company a percentage on each sale, the employer may deduct from the  
25 employee's tip a proportion of the credit card charge that is the same proportion that the  
26 tip is to the total bill. A tip that is charged to a credit card must be paid by the employer  
27 to the employee by the next regular payday and may not be held while the employer is  
28 awaiting reimbursement from a credit card company.

## 29 SUMMARY

30 This bill clarifies that tips belong to the employee providing direct service and that  
31 the entire tip, less a pro rated percentage, if any, charged by the credit card company,  
32 from any credit card payment must go to the employee. It allows the pooling of tips in  
33 limited circumstances. It also increases the threshold from \$20 a month to \$30 a month in  
34 tips in the expanded definition of service employee.