

Guidance on Service Charges in Oregon

Oregon's restaurants are facing increased costs. Over the past several years, new regulations including minimum wage increases, paid sick leave, healthcare, and restrictive scheduling are all contributing to operational challenges. In an effort to deal with these statewide laws, some restaurants in Oregon have elected to add a service charge to their receipts to defray cost escalations. The following document (which has been vetted for legal accuracy by one of ORLA's partner law firms) has been created to provide guidance to Oregon's restaurants who have implemented or are considering implementing a service charge to their customers.

Restaurants have recently started to see increased consumer lawsuits challenging the imposition of service charges. These lawsuits – largely brought under state consumer protection laws – claim that service charges are “false” or “misleading” to customers. Additionally, some city attorneys have announced that they are looking into the legality of restaurant service charges under state consumer protection laws. As a result of this activity, some west coast states and municipalities have started to address the imposition of service charges in restaurants. Specifically, several municipalities in California, such as the City of Santa Monica and City of Oakland, have adopted city ordinances and regulations that address not only the manner in which any service charges collected must be distributed to employees, but also the manner in which service charges must be disclosed.

Washington's Attorney General has also issued guidelines relating to the imposition and disclosure of service charges. All of these ordinances, regulations, and guidelines require written disclosure of the service charge, in a manner that is “clear and conspicuous,” before the customer orders or purchases any food or beverage item.

Oregon has not implemented any laws or regulations that provide guidance on how a restaurant should specifically and clearly disclose the existence of a service charge. However, *in an effort to minimize the risk of litigation*, the Oregon Restaurant & Lodging Association is recommending restaurants adhere to the following guidelines when implementing any service charge:

- Provide written disclosure of the service charge *before* the customer orders any food or beverage item.
 - Disclosure of service charge should be included on all menus provided to customers.
 - Take steps to disclose service charges in other areas where a customer is likely to receive notice, i.e., at all entrance points, checkout/ordering areas, on any restaurant website, and on any advertising or promotional materials where prices are listed.
- Disclosure of the service charge should include the percentage of the service charge, what the service charge is for, and the employees that share in the service charge.
- Percentage and amount of service charge should be disclosed as a *separate line item* on every receipt or guest check.
- Disclosure of service charge must be *clear and conspicuous* in a manner that consumers can easily understand.
 - Disclosure should be written in a manner so that customers can easily understand the amount of the surcharge and how it will be applied.

- Disclosure should be made in a manner that calls the customer's attention to the language, i.e., larger type than the surrounding text, in a contrasting type, font, or color than the surrounding text, or set off from surrounding text by a symbol or other mark.

- Service charge may not be described as a “tax,” “mandate,” “government mandate,” or in any other manner that mischaracterizes the purpose of the charge.
- If a restaurant provides a specific description for how the service charge will be used, revenue generated from the service charge should be used as described.
- Consult with an attorney to review any planned means for disclosure of service charge.
- Consult with tax and/or employment attorney regarding how to properly distribute and report service charge revenue.

In summary, while there is no Oregon regulation or statute governing service charges, restaurants implementing a service charge (or considering implementing a service charge) should take careful steps to disclose the service charge in a clear, accurate, and thorough manner. Doing so will assist restaurant operations in minimizing legal risk associated with false advertising or unfair business practice claims.

A special thanks to Davis Wright Tremaine and the California Restaurant Association for their ongoing commitment to industry partnership and collaboration. For more information on service charges, tips and tip pooling, visit OregonRLA.org.