

No Means No: “Shift Supervisors” Are Not Entitled to Pooled Tips

By Andrew Shriro, Esq.

A recent decision by the First Circuit will have vast ramifications for all restaurant owners in Massachusetts. In *Matamoros v. Starbucks Corp.*, 2012 WL 5458443 (1st Cir. 2012), the Court held that shift supervisors (at Starbucks) did not qualify as “wait staff” eligible to participate in tips pools under provisions of Massachusetts Tip Act, M.G.L. c. 149, 152A, since those employees had some managerial responsibility. *Matamoros* makes crystal clear that employees with even a scintilla of managerial duties are precluded from receiving monies gathered by pooled tips.

In *Matamoros*, the First Circuit Court of Appeals upheld a trial court decision in favor of employees (baristas) of Starbucks on their claim that the company illegally deprived the baristas of tips owed to them by including managerial employees in the tip distribution. The tips were deposited by customers in tip jars located at the store’s cash registers. The baristas alleged that Starbucks’ policy allowing shift supervisors to receive a portion of customer tips violated the Massachusetts Tip Act. The District Court awarded the baristas 14 million dollars because it concluded that shift supervisors should not have been permitted to participate in the distribution of tips. The Tips Act prohibits tip pooling among wait staff employees and non-wait staff employees, and defines a wait staff employee as a person who serves goods or beverages directly to patrons, works in a restaurant or similar facility, and has no *managerial responsibility*.

On appeal, Starbucks argued that because a shift supervisor’s primary duties involve serving customers, they were included among “wait staff employees,” which would allow them to receive a portion of pooled tips under the law. Starbucks attempted to distinguish the shift supervisors’ relatively minor supervisory duties from “management.” For instance, Starbucks argued that there was a difference between “supervision” and “management” and its shift supervisors did not have managerial responsibility because they spent 90% of their time serving customers and only about 10% of their time directing the work and “running” the shift.

The Court disagreed with Starbucks. Under the previous version of the Tips Act, courts permitted employees to share in tips if their “primary duty” was to serve customers. Here, under the version amended in 2008, “The Tips Act states unequivocally that only employees who possess no managerial responsibility may qualify as wait staff. No means no, and we interpret that easily understood word in its ordinary sense: ‘not any.’” The Tips Act, therefore, bars employees who possess any managerial responsibilities, whatsoever, from participating in tips pools with “wait staff” employees.

The decision helps clarify the extent that courts will limit the eligibility of employees to share in tip pools, and what degree of supervisory duties would prohibit employees from receiving portions of pooled tips. The Court cautioned employers not to rely on definitions of employees rather than specific functions, in order to avoid required compliance with the statute. Job titles are not dispositive in an inquiry into the application of this statute.

Perhaps more troubling for employers than the Court’s bright-line approach regarding pooled tips, is the Court’s analysis of the treble damages portion of the Tips Act, which increased the judgment against Starbucks significantly. As part of the 2008 amendments to the Tips Act, the Massachusetts legislature made treble damages for Act violations mandatory by labeling them as “liquidated damages.” Under the previous version of the statute, awards of treble damages were discretionary and depended upon a finding of an employer’s outrageous conduct. Starbucks argued that the mandatory trebling of damages deprived Starbucks of due process because damages were not based upon proof reprehensibility. The First Circuit rejected this argument too, holding that the trebling of damages was in the form of liquidated damages, not punitive, and therefore passed constitutional muster.

In light of *Matamoros*, employers who allow for the pooling and distribution of tips must diligently supervise the process to ensure that only eligible employees receive a share of tips.