

## Calif. Supreme Court allows food servers to proceed with suit over ‘service charges’



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*The Julia Morgan Ballroom in San Francisco was cited in a lawsuit over servers' compensation.  
Photo: Michelle Nicole Photography / Wedding Spot*

The state Supreme Court opened the door Wednesday for food and beverage servers at hotels, country clubs and banquet rooms in California to receive the “service charges” that management commonly adds to customers’ bills.

The hospitality industry typically tacks charges of 18% or more onto food and drink bills. To customers, the charges look like tips, but in California owners usually keep the money or share some of it with selected employees.

But a state appeals court in San Francisco [ruled in October](#) that service charges can fit the legal definition of a “gratuity,” or tip, which under state law must go to the servers.

Ruling on a 21% service charge by the Julia Morgan Ballroom in San Francisco, the First District Court of Appeal said evidence in the case suggests that the charge “is plainly perceived by the customer to be a gratuity and is intended by the customer to be a gratuity.”

It is also a “fair inference,” the court said, that a customer “would not intend a gratuity to be pocketed by defendant,” the ballroom’s owner and operator. According to a class-action lawsuit by a former banquet server and bartender, the owner, Merchant Exchange Productions, kept part of the service charge and distributed the rest to managers and other non-servers.

The ruling stopped short of ordering the owner to pay future service charges to the servers, but allowed the employees to proceed with a suit that seeks such payments, and set a legal standard for all such employers.

The owners appealed the ruling to the state Supreme Court, and the California Restaurant Association asked the court to revoke the ruling’s status as a published decision for other courts to follow.

But the court denied review Wednesday on a 5-2 vote, with Justices Ming Chin and Carol Corrigan dissenting. The court also left the appellate ruling intact as a precedent that is now binding on all trial courts in California.

“We will now be seeking court orders in this case and other cases to require hotels, restaurants and other establishments that charge a service charge to reimburse the proceeds of those payments to the workers,” said Shannon Liss-Riordan, lawyer for the former banquet server.

She said courts in New York and Hawaii had issued similar rulings after years of litigation.

Lawyers for the ballroom owner and the California Restaurant Association were not immediately available for comment.

California protects servers’ rights to tips more strongly than other states. Federal law, and the laws of most states, allow employers to deduct tips from employees’ wages, which can drop to as little as \$2.13 an hour as a result. Tips make up the rest of their minimum wages — \$7.25 an hour under federal law, higher in about half the states.

California law allows no such deductions and requires a minimum wage, not including tips, of \$13 an hour for employers with more than 25 employees, and \$12 for smaller employers. The minimum wage in San Francisco is \$15.59 an hour.

*The case is O’Grady vs. Merchant Exchange Productions, S259381.*

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