

CAYMAN ISLANDS



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THE LABOUR (AMENDMENT) LAW, 1993
(LAW 24 OF 1993)

CAYMAN ISLANDS

Law 24 of 1993

I Assent

MICHAEL J GORE
Governor

13th December, 1993

A LAW TO AMEND THE LABOUR LAW, 1987

ENACTED by the Legislature of the Cayman Islands.

Short title.

1. This Law may be cited as the Labour (Amendment) Law, 1993.

Law 30 of 1987
amended.

2. The Labour Law, 1987 is amended by repealing sections 32, 33, and 34, and inserting after section 31 the following Part –

**"PART 3A
GRATUITIES**

Interpretation
Part 3A.

32. In this Part–

"service employee" means an employee of a service employer who is within a class or description of

employees prescribed by regulations made for the purpose of section 34(1) and who works in the Cayman Islands;

"service employer" means an employer carrying on the business of a hotel, condominium, restaurant, licensed premises or other place of entertainment where the employer collects or receives gratuities in respect of services provided by the business.

Minimum
gratuity may be
prescribed.

33. (1) The Governor may, by regulations, prescribe the minimum rate of gratuity that is to be shown or included in accounts rendered to customers of hotels, condominiums, restaurants, licensed premises or other places of entertainment:

PROVIDED that the Governor may, in writing, upon application of a specific business, exempt any specific business from the regulations made under this section where the employer does not collect or receive gratuities in respect of services provided by a business mentioned in this subsection.

(2) Different minimum rates of gratuity may be prescribed for different types of businesses or different activities within a type of business.

(3) A person carrying on a business or an activity of a business in respect of which a minimum rate of gratuity has been prescribed in accordance with subsection (1) must show or include in all accounts rendered to customers of the business a gratuity at a rate not less than that prescribed.

Penalty: Fine not exceeding \$10,000

(4) The prescription of a minimum rate of gratuity in respect of a business or an activity carried on by a business, or the inclusion of a gratuity in an account rendered by a business does not imply a contractual obligation on the part of a customer of that business to pay any gratuity shown or included in an account rendered on behalf of the business.

(5) Notwithstanding subsection (3), it is not an offence under that subsection for a business to state that a gratuity shown or included in an account rendered on behalf of the business is shown or included at the minimum rate recommended by the Government and that payment of the

gratuity is discretionary.

Employees
entitled to
gratuities may
be prescribed.

34. (1) The Governor may, by regulations, prescribe classes of employees who are entitled to be included in the distribution of gratuities by a service employer.

(2) Classes of employees may be prescribed for the purpose of subsection (1) by –

- (a) the description of their position; or
- (b) the type of work they undertake; or
- (c) the level of their remuneration; or
- (d) the terms of their employment,

or by any combination of these matters.

All gratuities to
be distributed.

34A. (1) A service employer must distribute all gratuities collected or received by him amongst his service employees –

- (a) in accordance with a scheme approved by and registered with the Director; or
- (b) where no such scheme is registered - in accordance with a formula prescribed by the Governor by regulations.

Penalty: Fine not exceeding \$25,000, or imprisonment for a term not exceeding 1 year, or both and the service employer shall be required to distribute the gratuity in respect of which he was convicted amongst his service employees within such period as the court may order.

(2) A service employer is guilty of an offence under subsection (1) unless he distributes a gratuity collected or received by him amongst his service employees within three weeks of the end of the calendar month in which they were collected or received.

(3) A service employee is entitled to participate in the distribution of all gratuities collected or received by his employer in respect of the premises at which the employee is employed for services provided after the date the employee became a service employee at those premises.

(4) A person who ceases to be a service employee is entitled to participate in the distribution of all gratuities collected or received by his employer or former employer

in respect of the premises at which the employee was employed for services provided before the date the person ceased to be a service employee at those premises.

Service
employer to
keep records.

34B. (1) A service employer must keep a record of –

- (a) the total amount of gratuities collected or received by him in each month he provides services to customers; and
- (b) each account rendered to a customer of the employer showing –
 - (i) the service provided; and
 - (ii) the amount charged for the service; and
 - (iii) the amount of gratuity shown or included; and
 - (iv) the date on which, or the period during which the service was provided; and
- (c) the amount received or collected by the employer in respect of each account rendered by the employer showing –
 - (i) the amount received by the employer in respect of the service; and
 - (ii) any amount collected or received by way of gratuity; and
 - (iii) the date on which the amount referred to in subparagraph (ii) was collected or received; and
- (d) any gratuities collected or received by the employer otherwise than as referred to in paragraph (c)(ii); and
- (e) the name of each service employee of the employer who carried out any duties for the employer during any period when the employer was providing services to customers; and
- (f) each distribution of gratuities made to service employees showing –

- (i) the period in respect of which the distribution was made; and
- (ii) the date of the distribution; and
- (iii) the amount paid to each service employee.

Penalty: Fine not exceeding \$25,000 or imprisonment for a term not exceeding 1 year, or both

(2) For the purpose of subsection (1)(c)(ii) any amount paid under subsection (1)(c)(i) that exceeds the amount charged under subsection (1)(b)(ii) is to be regarded as a gratuity.

(3) A service employer must not keep a record for the purpose of subsection (1) that he knows or ought reasonably to know is false or misleading.

Penalty: Fine not exceeding \$25,000 or imprisonment for a term not exceeding 1 year, or both

(4) A service employer must, in a format approved for the purpose by the Director and within 6 weeks of the end of a month, provide to the Director details of the gratuities received by the service employer during that month and the manner in which those gratuities were distributed.

Penalty: Fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months, or both

(5) Where a service employer provides details of gratuities to the Director in accordance with subsection (4) the service employer must –

- (a) at the same time make available on request a copy of the details to service employees referred to in the details; and
- (b) make these details available for at least 2 weeks.

Penalty: Fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months, or both

(6) A service employer must, when requested to do so

by the Director –

- (a) produce to the Director for inspection the record kept by the employer for the purpose of subsection (1); and
- (b) provide to the Director a copy or print out of the information stored in the record.

Penalty: Fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months, or both

(7) A person required to keep a record for the purpose of subsection (1) must retain any record made for the purpose of that subsection for at least 3 years.

Penalty: Fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months, or both.

(8) In this section "record" means any means by which information may be stored and retrieved.

Notice of rate or amount of gratuity to be displayed.

34C. (1) A service employer must display in a place where it may be easily seen by a customer of the employer a notice stating the rate of gratuity applicable to services provided by the employer.

Penalty: Fine not exceeding \$10,000.

(2) It is sufficient compliance with subsection (1) if the rate of gratuity is shown on a menu or other document that would normally be read by customers of the employer."

Passed by the Legislative Assembly the 24th day of September, 1993.

SYBIL McLAUGHLIN
Speaker.

GEORGETTE MYRIE
Clerk of the Legislative Assembly.

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