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Posted on May 7th, 2014 by Kara M. Maciel

## Passing Credit Card Swipe Fees to Employees and Guests

By Kara Maciel



Our national hospitality practice frequently advises restaurant owners and operators on whether it is legal for employers to pass credit card swipe fees onto employees or even to guests, and the short answer is, yes, in most states. But whether an employer wants to actually pass along this charge and risk alienating their staff or their customers is another question.

With respect to consumers, in the majority of states, passing credit card swipe fees along in a customer surcharge became lawful in 2013. Only ten states prohibit it: California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, Oklahoma, Texas and Utah. If a restaurant decides to add a surcharge to the bill to recoup the credit card swipe fee, it is important that the fee not exceed the percentage charged by the credit card company, the fee is posted clearly on the guest check prior to paying the bill, and it cannot be used for debit card purchases.

With respect to employees, the credit card swipe fee may only be passed along to servers and applied to the tipped portion of the bill. For example, if a bill is \$100 plus a \$20 tip, the swipe fee on the \$100 (*e.g.*, 3 percent or \$3) must be paid by the restaurant. However, when paying out the server, you can allocate \$19.40 since you can charge the server 3 percent or 60 cents to recover the swipe fee on the gratuity. As with guests, an employer may not charge the server more than credit card swipe fee, and the reduced amount in tips cannot cause the employee to earn less than the minimum wage. And again, you must always check state and local law as some states prohibit deductions from credit card tips for processing fees, such as California, Colorado, Nevada, New Mexico, Oregon, and Washington, among others.

But even if legal, is it practical or good business sense to pass along processing fees to employees and customers? Is it industry practice in your market to pass along these fees, or do you risk angering an important stakeholder in your profit margin – your employees and customers? Surcharges could be perceived as owners taking more money out of the pockets of employees and customers and companies could risk losing the business to another restaurant down the street. Unless the practice becomes an industry standard, it is likely that adding a surcharge or deducting the swipe fee from tips could do more harm than good.

Tags: Articles, card, credit, credit card swipe fee, fee, Kara M. Maciel, restaurant, surcharge, swipe, Tipped Employees, tips

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