**Tips in Restaurants**

***I do casual work in a kosher restaurant. The restaurant charges a 12.5% service charge but quite often customers leave cash tips as well. The owner insists that she can keep the tips, because she takes them into account when calculating how much she can afford to pay the staff. What do Jewish business ethics have to say about this?***

This doesn’t sound like a kosher restaurant to me, unless we consider only Yoreh Deah (the part of the Shulchan Aruch – Code of Jewish Law – dealing with ritual matters) and exclude Choshen Mishpat (the part dealing with business matters)!

There could be some secular law involved here, and you may want to do some research in one of the publications that tell you about your rights, or consult a Citizens Advice Bureau. In particular, if the restaurant owner is paying you only the national minimum wage, then it is against the law for her to use customer tips to make up the amounts that she is obliged to pay you by law. There is also a Government Code of Practice about the use of tips in restaurants, which is not binding as a matter of law but is generally regarded as setting out the accepted industry standards on these matters.

The Code of Practice is also relevant to the Jewish business ethical approach to the issue, because as with many aspects of commercial halachah, a great deal depends on the *minhag hamakom* (accepted local custom and practice). The Code has been endorsed by a range of organisations within the service and hospitality industries, and was prepared as a result of consultation with those industries. A Beth Din, in determining what is acceptable from a halachic point of view, is likely to regard the Code as the starting point for determining standard industry practice. It could be overridden in a particular case by a clear contrary statement in a contract of employment, but if there is no written or oral term of your contract that expressly covers the point, then the *minhag hamakom* will become relevant and the Code of Practice will therefore acquire halachic influence.

Interestingly, the fundamental principle of the Code of Practice amounts to the same principle that would be applied by the halachah in determining what is in accordance with Jewish law, and by Jewish business ethical practice in determining what is morally acceptable behaviour. That principle is transparency: both in terms of the relationship between the restaurant and its employees and between the restaurant and its customers.

If I leave a discretionary tip in a restaurant I am intending to reward good service by the waiter or waitress who has looked after me, and my presumption is that they will be allowed to keep it. That is going to be particularly the case in a restaurant which, as you say yours does, already charges a “service charge” as part of the bill. Like many people, I assume that if I have paid an amount for service in the bill, then I do not as a general rule need to leave a tip at all; and if I do so, it is because I have received exceptional waiting service and want to show my gratitude.

By simply taking the tips for herself, your employer is therefore, to put it at the very least, risking appropriating money that has been in effect given by diners to you. That may or may not amount to actual *gezel* (theft) in halachah, depending on the precise circumstances, but it is certainly uncomfortably close to *avak gezel* (quasi-theft).

There are two actions I would expect your employer to take if she wants her restaurant to be regarded as kosher in all senses of the term.

First, she needs to ensure transparency. She needs to display in a prominent place a notice declaring that cash tips will be treated as given to the restaurant, and not to its employees. (Restaurants quite often operate a system of pooling staff tips and dividing them equally among all staff – which helps to avoid unfairness caused by “the luck of the draw” in who happens to serve generous clients: your employer will therefore need to make her notice clear enough to make people realise that it is not simply that tips are not treated as given to particular employees, but that they are not treated as given to the employees at all.) The notice should also explain what happens to the standard service charge.

Your employer is likely to be reluctant to display a notice of that kind. It is likely to lose custom (it would certainly lose mine) and does not present the restaurant in a particularly good light. That perhaps shows that in an uncertain area like business ethics, one of the best tests of ethical behaviour is not to do anything that you would be embarrassed for people to find out about!

The second action that I would expect your employer to take if she persists in appropriating money left by way of tips, is to ask a sha’aloh of a rabbi with expertise in Jewish business law. You and your colleagues should be given an opportunity to contribute to the terms in which the sha’aloh is asked; and the answer should be shared with you, preferably in writing.

Hopefully, your employer will decide to change her practice and ensure that tips are given to staff. If she does, remember that tips must be treated for tax purposes (although not for minimum wage purposes) as part of your income, and declared to HMRC annually (unless a pooling and sharing system is used in which case tax will be deducted at source).

**Daniel Greenberg.  (Copyright the author; all rights reserved; note that this column aims to explore general issues of secular and Jewish law and ethics and does not purport to provide legal advice.)**