

AN ORDINANCE CONCERNING GRATUITIES AND EMPLOYMENT TERMINATION

Section 1. Scope and Definitions.

The following definitions shall apply throughout this Chapter:

- A. "City" means the City of Atlantic City and all city agencies, departments and offices.
- B. "Employee" means any person who is employed by an Employer in a nonprofessional or non-managerial capacity except those whose employment duties predominantly involve the maintenance or operation of gaming activity or equipment or those employed as security or surveillance personnel.
- C. "Employer" means (i) any person or entity employing any person in a Facility in the City in which 250 or more employees work (even if working for different employers unless the Facility is comprised primarily of offices) and (ii) any person which owns, operates or controls the operation of such a business. For the purpose of this Chapter, "Employer" shall not include governmental entities, schools, or non-profit corporations.
- D. "Facility" shall include separate buildings operated in conjunction with each other such as a hotel and any restaurants, casinos or spas connected thereto, or adjacent thereto with related operations.
- E. "Gratuity" Money paid or given to or left for an Employee by a patron of a business over and above the amount due the business for services rendered to the patron or for goods, food, drink, or articles sold or served to the patron.
- F. "Just cause" means reasonable, demonstrable, job related grounds for termination based on a failure to satisfactorily perform job duties or other legitimate business reason uniformly applied to all Employees. Expiration of a specified duration of employment (sometimes referred to as "term limits") shall not constitute just cause for termination.
- G. "Terminate" includes any termination of employment which is involuntary on the part of the Employee.

Section 2. Exemptions.

- A. An Employer shall be exempted from application of this Chapter if it employs fewer than five Employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year.
- B. The provisions of this Chapter may not be waived by agreement between an individual Employee and an Employer. All of the provisions of this Chapter, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this Chapter.

Section 3. Cause For Termination.

- A. An Employer shall not terminate the employment of any Employee who has been employed by the Employer for 60 calendar days or more, except for Just Cause.
- B. A new owner or operator of any operation or facility covered by this Chapter shall not without Just Cause use a new hire rather than rehiring an Employee of its predecessor who worked there for over 60 days. It shall not constitute Just Cause for refusal to rehire that in their prior employment such worker was receiving superior wages, benefits or working conditions.
- C. Nothing herein shall be construed to interfere with the authority of state gaming regulators nor to restrict the Employer's discretion in selection of supervisors.

Section 4. Gratuities.

- A. Every gratuity shall be the sole property of the Employee or Employees to whom it was paid, given, or left for, and shall be paid over in full to such Employee or Employees. Except to the extent protected by state law, no Employer may deduct any amount from wages due to an Employee on account of a gratuity, or require an Employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due to the Employee from the Employer. If the Employer takes a tip credit or tip deduction permitted by state law, it shall disclose this to customers on its menu and on a sign at each doorway from which the public enters the facility where the credit or deduction is taken.

PETITION TO ADOPT ORDINANCE CONCERNING GRATUITIES AND EMPLOYMENT TERMINATION

B. An Employer that permits patrons to pay gratuities by credit card shall pay Employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deduction for any credit card payment processing fees or costs that may be charged to the Employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the Employees not later than the next regular payday following the date the patron authorized the credit card payment.

C. Nothing in this Section shall prohibit an Employer from adopting and enforcing a policy under which gratuities are pooled and distributed among all Employees who directly provide service to patrons.

Section 5. Enforcement by the City.

A. An Employer shall maintain a listing of all persons in its employ containing for each their name, address, date of hire, occupation classification and whether the Employer believes them covered by this Chapter, and if covered, also showing their normal daily compensation rate, and reasons for any termination. The Employer shall submit a copy of this listing to the City by March 31st, June 30th, September 30th, and December 31st of each year. Failure to provide this listing within five days of the due date will result in a penalty of at least one hundred dollars (\$100.00) per day until provided, but not to exceed \$500 per day. An Employer shall maintain all records on the items referenced in such listings for all Employees for a period of three years.

B. An Employer shall give written notification to each current and new Employee, at time of hire, of his or her rights under the provisions of this Chapter. The notification shall be in the form provided by the City in English, Spanish and other languages spoken by a significant number of the Employees, and shall be posted prominently in areas at the work site where it will be seen by all Employees. A copy of such notification shall be forwarded to the City.

C. An Employer shall permit access to work sites and relevant personnel records for authorized City representatives for the purpose of monitoring compliance with this Chapter, investigating Employee complaints of noncompliance and evaluating the operation and effects of this Chapter, including the production for inspection and copying of its personnel records for any or all of its Employees. The City Council is authorized to increase mercantile license fees for those Employers covered by this Chapter to cover any additional costs to the City for enforcement.

D. The City is authorized to bring a civil action to enforce this Chapter. A customer having evidence of violation of the consumer notice requirement in Section 4 may bring a private action to enforce this Section if he gave at least 30 days prior notice to the Employer and City of his intent to sue but the violation was not cured and the City has not instituted formal action for enforcement. Each day of violating the notice requirement shall be deemed a separate violation, and the City or customer may be awarded injunctive relief, attorney's fees and penalties to be paid the City of at least \$100 per day but not to exceed \$2000 per day.

Section 6. Enforcement by Employees.

A. It shall also constitute a violation of this Chapter for any person to discriminate against any other person for pursuing enforcement of this Chapter or for assisting others in pursuing enforcement of this Chapter

B. An Employee claiming violation of this Chapter may bring an action in the Superior Court of the State of New Jersey to enforce the provisions of this Chapter for himself and all similarly-situated Employees and shall be entitled to back pay, reinstatement, injunctive relief, recovery of penalties for the City and to any other remedies available at law or in equity appropriate to remedy any violation of this Chapter. A termination or failure to rehire in violation of this Chapter shall be subject to a penalty of at least \$100 per day after not being reinstated or rehired after demand therefore, not to exceed \$2000 per violation.

C. The Court shall award reasonable attorney's fees and expert fees and costs to an Employee who prevails in any enforcement action.

D. Notwithstanding any other provision of this code to the contrary, no criminal penalties shall attach for any violation of this Chapter.

E. No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in court.

PETITION TO ADOPT ORDINANCE CONCERNING GRATUITIES AND EMPLOYMENT TERMINATION

Section 7. Severability.

If any section or any portion of a section of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining sections and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this Chapter. The courts are authorized to reform the provisions of this Chapter.