

Bruno W. Katz

Partner



- Rated by American Lawyer and Martindale-Hubbell as a Top Rated Lawyer in Labor & Employment
- Board Member California Restaurant Association-San Diego Chapter
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Use of Surcharges and Best Tips to Avoid False Advertising and Other Consumer Claims

THE HOSPITALITY LAW CONFERENCE: SERIES 2.0 - HOUSTON

APRIL 9 - 10, 2019

Increased Labor Costs

- Increased Minimum Wage
- Mandatory Paid Sick Leave
- Cost of Healthcare
- Restrictive Scheduling
- Pay Inequity (tip v. nontipped)

Options to Defray Costs

- Increase Prices
- Adopt Hospitality Included Model – No Tips
- Impose Mandatory Service Charge
- Surcharge – between 2% to 4%
- Do Nothing

Surcharge – Wages

- If Distributed to Employees
 - Must report as Salaries and Wages on the business tax return.
 - Recalculation of employees' overtime rate.
 - Count toward regular rate of pay and factored into overtime calculation.



Surcharge – Legal Attacks

- City Attorney Investigations and Lawsuits
- Private Civil Action-Class Action Allegations
- False Advertising Law
- Unfair Competition Law
- Consumer Protection Statutes
- Negligent and Intentional Misrepresentation



Surcharge – Remedies

- Actual damages
- Penalties
- Injunction-methods, acts, or practices
- Restitution of property
- Punitive damages
- Any other relief as deemed by the court

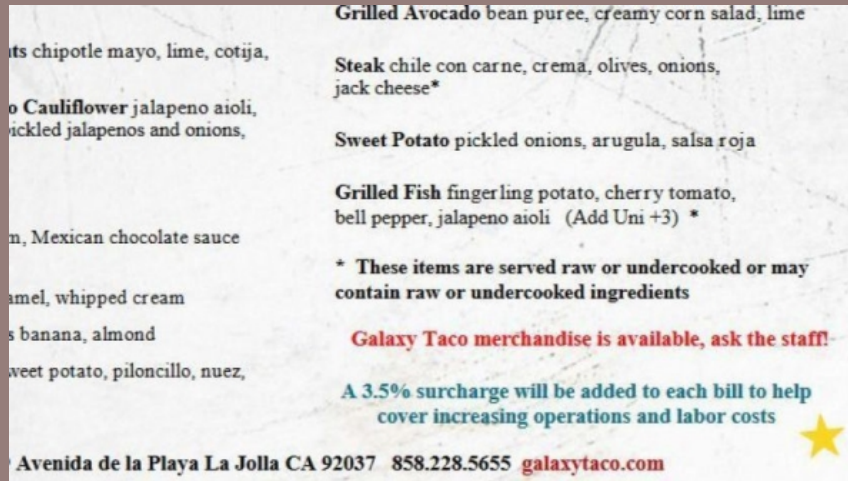
Best Practices – Notice

- Signage – entrance, registrar and/or table
- Disclose on menus
- Disclose on websites
- Disclose in advertisements both paper and electronic
- Training on messaging

Best Practices – Notice

- Stay away from the word mandate
- Keep any rationale as to the reason for the surcharge as broad as possible
- Consider different fonts, colors, background to make notice stand out
- Do not utilize smaller font than other items

Examples of Surcharge



WE TAKE PRIDE IN OUR SERVICE.

A 3% surcharge is included on all guest checks to help offset increased labor costs due to new local, state, and federal ordinances.

Examples of Surcharge



Baked pasta	\$14.00
Side salad	\$ 4.00
Wine	\$ 8.00
Subtotal	\$26.00
Restaurant Surcharge (3%)	\$.78
Total sale	\$26.78
Sales tax [8.5% x 26.78]	\$ 2.28
Total due	\$29.06



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Thank you for attending!