**CREDIT CARD SURCHARGES: ARE THEY LEGAL?**

**By Attorneys, Kelly McCall and Michelle Anderson Fisher & Phillips**

Credit card swipe fees have been a thorn in the side of businesses and consumers alike. Businesses, including restaurants, pay credit card networks (such as Visa, AMEX and Mastercard) to allow them to accept credit card payments for purchases. Some businesses choose to pass this fee on to the consumers – a surcharge. Are these surcharges legal? If so, how should your restaurant protect itself while utilizing credit card surcharges?

**What is a credit card surcharge?**

A credit card surcharge is a way for businesses to have their customers who pay with a credit card cover the processing costs for accepting those credit card transactions. These surcharges typically range from 1.5 to 4 percent of the transaction amount. Credit card surcharges are **not** the same as convenience fees.

Convenience fees are charges passed on to customers for the privilege of paying for a product or service using an alternative payment method that is not standard for the business. For example, a business that traditionally accepts cash or checks but also offers credit card payments or the use of banking apps (PayPal, Zelle, Venmo) for convenience, might charge an additional fee for that convenience. Another example of a convenience fee is a restaurant offers curbside/take-out or delivery, it charges a convenience fee for these services, that it does not charge for in-person dining. The convenience fee is charged not for using a credit card, but for the privilege of accessing the services for take-out or delivery.

**Is it legal?**

A United States Supreme Court ruling in 2017 protected surcharges as a form of free speech from merchants. That does not, however, limit states from imposing restrictions. There are at least ten states that prohibit surcharges (and some convenience fees). Louisiana is not presently one of those states.

Businesses can also require a minimum purchase amount when a credit card is used, under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The minimums cannot be more than $10, and the minimum cannot be set higher than what other merchants in the same card network use.

**Rules for credit card surcharges**

There are rules for businesses to follow when it comes to credit card surcharges. If your restaurant is using credit card surcharges, then you must do the following:

* Check with your credit card network for any requirements or restrictions
* If doing business outside of Louisiana, check state law
* Clearly disclose the fact that there is a surcharge **before** the transaction
* Display the credit card surcharge on the receipt
* Keep surcharges below 4% of the transaction, or the amount of the fees the merchant pays to the credit card companies, whichever is less

Keep in mind, surcharges are only allowed for credit card purchases – not debit card or preloaded gift card transactions.

**Should you use a surcharge?**

Accepting credit cards costs restaurants more in comparison to cash. Processing fees and expenses like card readers and point-of-sale systems quickly add up, especially for small business owners. Consumers, however, are becoming overrun with fees. In some instances fees are costing almost as much as the meal itself.  Businesses should evaluate the pros and cons and weigh that small profit against the potential profit loss from turning away some customers due to the surcharges. This is particularly true if other establishments in your local area are not including surcharges for accepting credit cards. Evaluate whether there is another way to cover the costs through pricing of your products and services versus having the additional charge on the bill. As with many things in business, just because you can is not necessarily the same answer as whether you should.

*For more information contact the authors at* *Kmccall@fisherphillips.com* *or* *Manderson@fisherphillips.com*