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DATE: September 26, 2001

TO: All Local Health Departments
Attn.: Health Officer/Director of Environmental Health/Chief Sanitarian
MDA Food Program Staff

FROM: Food Service Sanitation Section & Food Section
Food and Dairy Division

SUBJECT: **Answer to a Question on the Food Code – HAIR RESTRAINTS**

This memorandum expands, revises, and replaces the memorandum of June 7, 2001, "Answer to a question concerning the Food Code and Food Law of 2000."

Question: Are wait staff and cashiers non-food employees?

Answer: Job activities, rather than job titles, determine who falls under the definition of "food employee" in the FOOD CODE. "Food Employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces." Food Code § 1-201.10(30).

Thus, cashiers with no other assignments are not "food employees" and do not fall under the requirements for food employees. Wait staff generally meet the definition of a food employee (since they handle dishes and utensils), therefore, they must meet the requirements specified in the Food Code. A wait staff with Hepatitis A virus would, therefore, fall under the exclusion requirement for food employees.

Question: Are wait staff required to wear hair restraints?

Answer: Wait staff are exempt from the hair restraint requirement "if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles." FOOD CODE § 2-402.11(B).

In most situations, wait staff will not be required to wear hair restraints. However, "minimal risk" will be determined based upon assessment of the whole situation.

No answer can anticipate all possible circumstances, but factors to consider in determining whether the lack of hair restraints presents more than minimal risk in a particular setting include the following:

- (i) *Amount of food exposure* – how much time the wait person spends working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (ii) *Activities conducted by the staff* – for example, whether the wait staff is engaged in any food processing or handling, and the scope of that activity, such as whether there is any manual contact of food or food-contact surfaces.
- (iii) *Assessment in light of the twin goals of the requirement* – the purpose of the requirement is twofold: to prevent both direct and indirect contamination. A restraint keeps dislodged hair from ending up in food. However, food employees may contaminate their hands when they touch hair, and the hair restraint may deter employees from touching their hair.

The overall assessment needs to consider both whether the establishment's practices effectively minimize contamination of hands; and whether there is minimal risk of hair getting into the food. For example, it may be acceptable for a wait staff to remove the hair restraint while serving, but wash hands and put on a hair restraint while making a batch of cole slaw.

NDF:GW:khg

cc: Retail Food Advisory Board