



An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission



Payment of Wages (Amendment) (Tips and Gratuities) Act 2022

Information Guide

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Workplace Relations Commission 1 December 2022

Background

There has been anecdotal evidence that some employers, particularly in the restaurant and hospitality sectors, use tips or gratuities given by customers and intended for staff as a means of meeting their payroll obligations and other overheads.

Until now, there has been no legislation which obliges employers to pass on any tips received by them to their staff. Therefore, a customer had no way of knowing if the tip they left was given to the intended recipient(s) and the worker had no protection if their employer chose to keep some or all the tips left by customers. While most employers treat their staff well, there are examples where some tips are simply included as part of overall business income or used to contribute to employees' contractual base wages.

The legislation:

- provides clarity on the treatment of tips, gratuities, and service charges;
- places tips and gratuities outside the scope of a person's contractual wages;
- obliges employers to display prominently their policy on the distribution of both cash and card tips and mandatory charges, including service charges; and
- obliges employers to distribute in a manner that is fair in the circumstances tips that are received in electronic form i.e., through cards or smart phones.
- obliges employers to distribute to staff any charge called a 'service charge' or anything that would lead a customer to believe that it is a charge for service.

The main sectors to which the Act will apply are tourism, hospitality, hairdressing, taxi, and delivery services. The tourism and hospitality sectors are seen as a valued and sustainable career choice and this Act will bring clarity and transparency to this important aspect of the tourism sector work experience.

These sectors attract a significant percentage of young people, students, females, and migrant workers for whom English is very often not a first language.

Tips can form a significant percentage of a worker's take-home pay and these changes go some way to ensuring those tips are distributed to the people who have earned them. The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 represents a relatively small set of amendments but is seen as a positive step towards improving the rights and entitlements of lower paid workers as well as providing transparency for customers.

Purpose of the new Act of 2022

There are 4 main aims for the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022:

1. The Act will provide a legal entitlement for workers to receive tips and gratuities paid in electronic form (i.e., by debit or credit card or other smart type payment cards) with a provision that these tips and gratuities should be paid out to workers in a manner that is fair in the circumstances. The employer must provide a statement to workers showing the amount of tips obtained in a period and the portion paid to the individual employee for that particular period. This will ensure transparency.
2. An employer may not retain any share of tips received electronically, unless such retention is required by this Act, e.g., to pay an employee's portion of tax, PRSI or USC or bank charges arising from providing electronic modes of tipping, or only where they regularly perform to a substantial degree the same work performed by some or all the employees, such amount that is fair in the circumstances.
3. The Act will also require businesses to clearly display their policy on how tips, gratuities and service charges are distributed. The customer will be better informed about how tips are treated. The resulting transparency can have a very strong and positive impact on how people will behave. The Act also provides for similar provisions for new models of work such as platform workers who are not direct employees, but their work typically attracts tips e.g., food takeaway delivery or taxi services apps.
4. Any charge called a 'service charge' or anything that would lead a customer to believe it is a charge for service, will have to be distributed to staff as if it were a tip or gratuity received by electronic means.

5. It will prohibit employers from using tips and gratuities to 'make up' contractual rates of pay. An employer cannot make a deduction from a person's wage in relation to tips and gratuities. The policy intent is to ensure tips and gratuities are additional to the wage and are not subsumed into the wage.

While employers will be required to include detail on how cash tips are dealt with when displaying their policy towards tips and gratuities, there will be no other regulation of 'cash tips'. Cash tips are not under the control of the employer.

When did the new Act come into effect?

The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 took effect from 1st December 2022.

What legislation is being amended by the new Act?

Changes are being made to the following Acts:

- Payment of Wages Act 1991
- Terms of Employment (Information) Act 1994
- Workplace Relations Act 2015

Changes to the Payment of Wages Act 1991

Changes have been made to the Payment of Wages Act 1991 to:

- place tips and gratuities outside the scope of a person's contractual wages;
- oblige employers to display prominently their policy on the distribution of both cash and card tips;
- oblige employers to distribute in a manner that is fair in the circumstances tips that are received in electronic form i.e., through cards or smart phones.

Employees will have an entitlement to make a complaint to the Workplace Relations Commission (WRC) in relation to a perceived or alleged unfair distribution of tips as well as unlawful deductions from their tips and gratuities.

Change to the Terms of Employment (Information) Act 1994

The Terms of Employment (Information) Act 1994 has also been amended so that a statement regarding the employer's policy on the way tips or gratuities and mandatory charges are treated will become part of the core terms that must be given to a new employee within 5 days of commencing employment.

Change to the Workplace Relations Act 2015

The Workplace Relations Act 2015 has also been changed to enable the Workplace Relations Commission Adjudication Services to deal with complaints and disputes and to authorise the Workplace Relations Commission Inspectors (WRC) to carry out certain inspections regarding compliance with the new requirements set out in the Act.

The powers of a WRC inspector under section 27 of the Workplace Relations Act 2015 are extended to include the exercise of those powers as they may relate to contract workers and those who engage contract workers at or through their premises. Section 27 normally applied only to places in connection with a contract of employment, so this is necessary to allow enforcement powers in relation to contract workers.

Here are some definitions.

A 'tip or gratuity' is a payment that is voluntarily made to, or left for, an employee or group of employees by a customer, in circumstances in which a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the employee or shared with other employees. The tip or gratuity could be left directly with the employee or employees or could be left with the employer.

A 'contract worker' means a natural person who carries out work other than as an employee, including on a contract for service. This definition is necessary to ensure that 'platform workers' who are engaged in contracts for services will benefit from tips and gratuities. Those who use contract workers to deliver services will be required to display a contract workers tips and gratuities notice.

A 'mandatory charge' is a contractually imposed and receipted payment that a customer is required to pay in addition to the amount payable for the cost of certain goods or services". This may include service charges, cover charges, table charge, corkage, etc.

Any charge called a 'service charge' or anything that would lead a customer to believe it is a charge for service, must be distributed to staff as if it were a tip or gratuity received by electronic means.

What employers are covered by the Act?

The Minister has made Regulations called the Payment of Wages (Application) Regulations 2022 which prescribe the services to which the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 will apply. Where an employee's responsibilities relate, in whole or in part, to one or more of the services mentioned below, the employer is prescribed as an employer to which sections 4B to 4E of the Payment of Wages Act 1991 will apply. It should be noted that this list may be amended in the future to include additional services if such services would typically attract a tip or service charge.

Classes of Employers prescribed by Regulations under the Act:

The following service areas are those within the economy where tipping is prevalent. There may be additions to this list in the future if new areas where tipping is prevalent emerge in the economy over time.

1. The sale of beverages (including intoxicating liquor) or food for consumption on the premises at which such beverage or food is sold.
2. The sale of beverages (including intoxicating liquor) or food by means of casual trading (within the meaning of section 2 of the Casual Trading Act 1995 (No. 19 of 1995)).
3. The accommodation of overnight guests on a commercial basis in a hotel, guesthouse, hostel, bed and breakfast, self-catering accommodation facility or any similar accommodation facility.
4. Providing guided tours.
5. Carrying out non-surgical cosmetic procedures including the following: cosmetic nail care; nail styling; skin care; hair care; hair styling; tattoo services; and piercing services.

6. Gaming (within the meaning of the Gaming and Lotteries Act 1956 (No. 2 of 1956)) carried on exclusively amongst members of a Private Members' Club (howsoever described) and which is the primary purpose of such Private Members' Club.
7. The provision of services as a licensed bookmakers (within the meaning of the Betting Act 1931 (No. 27 of 1931)).
8. Providing transport services by means of a public service vehicle other than the following:
 - (a) services provided under a public transport services contract entered into under section 48 of the Dublin Transport Authority Act 2008 (No. 15 of 2008);
 - (b) services provided under a public bus passenger service licence granted under section 7 of the Public Transport Regulation Act 2009 (No. 37 of 2009);
 - (c) services provided exclusively for carrying children to or from a school.

What is a Tips and Gratuities Notice?

Every employer will be required to display information on the manner in which tips or gratuities and mandatory charges are shared or distributed to employees.

The information to be displayed must state –

- o whether tips or gratuities are distributed to / amongst employees,
- o where tips or gratuities are distributed to / amongst employees, the way they are distributed and the amounts so distributed,
- o whether mandatory charges, or any portion of them, are distributed to / amongst employees, and if so, the way they are distributed and the amounts so distributed, and
- o such further or additional information as may be prescribed by Regulation.

The Minister has made Regulations which prescribe the different ways that the tips and gratuities notice will have to be displayed by the various classes of employer.

The display provisions for the tips and gratuities notice will vary somewhat for employers depending on whether employers have fixed premises, mobile vehicles, or are web-based companies. For example, a taxi will not be required to display a notice unless the driver is an employee. A hotel or restaurant will be required to display a notice in such a position as to be clearly visible and easily accessible. A 'platform-style' business will be required to display notices on its website or app.

The requirement for businesses to display their policy on tips, gratuities and mandatory charges will ensure that customers are fully informed of where their money is going and can act accordingly.

Display Notice Requirements prescribed by Regulations under the Act:

1. The following display notice requirements shall apply to employers in service areas such as restaurants, pubs, hotels, guesthouses, tour companies, hairdressers, beauty salons, bookmakers. A tips and gratuities notice shall be displayed –
 - (a) at the premises, or the part of the premises, on which the employer provides the relevant service, and in at least one location at which consumers may pay in person for the relevant service, or
 - (b) where the premises, or the part of the premises, does not have an entrance that may be accessed by consumers, in at least one location at which consumers may pay in person for the relevant service, and
 - (c) on each website, mobile application and other online digital platform used by the employer in connection with a relevant service.
2. The following display notice requirements shall apply to employers in service areas such as taxis, hackneys, coach hire, limousines. A tips and gratuities notice shall be displayed–
 - (a) on each website, mobile application and other online digital platform used by the employer in connection with a relevant service,
 - (b) in such a position as to be clearly visible and easily accessible to, and in such form and manner as to be capable of being easily read by consumers travelling in the public service vehicle (within the meaning of the Regulations of 2022) concerned.

WRC inspectors will have powers under section 27 of the Workplace Relations Act 2015 to inspect at employer premises. An employer who contravenes these display obligations will be guilty of an offence and liable on summary conviction to a Class C fine, currently up to €2,500.

What is a Contract Workers Tips and Gratuities Notice

The Act provides for display notice provisions for new models of work such as platform workers who are not direct employees, but their work typically attracts tips e.g., food or goods delivery apps or taxis booked through platform operators.

A 'contract worker' means a natural person who carries out work other than as an employee, including on a contract for service. This definition is necessary to ensure that 'platform workers' who are engaged in contracts for services will benefit from tips and gratuities. Those who use contract workers to deliver services will be required to display a contract workers tips and gratuities notice.

A 'platform-style' business to whom the Act applies (referred to in the Act as a 'prescribed person') will be required to display information on the manner in which tips or gratuities and mandatory charges are shared or distributed to 'contract workers'. The information to be displayed must state –

- o whether tips or gratuities are distributed to and amongst contract workers,
- o where tips or gratuities are distributed to and amongst contract workers, the way they are distributed and the amounts so distributed,
- o whether mandatory charges, or any portion of them, are distributed to and amongst contract workers, and if so, the way they are distributed and the amounts so distributed, and
- o such further or additional information as may be prescribed by Regulation.

The Minister has made Regulations which prescribe the different ways that a 'Contract Workers Tips and Gratuities Notice' will have to be displayed by the various classes of 'prescribed persons'.

The contract workers tips and gratuities notice shall be displayed on each online digital platform used by the person in connection with the relevant service in such form and manner as to be capable of being easily read by consumers using the online digital platform in connection with a relevant service.

WRC inspectors will have powers under section 27 of the Workplace Relations Act 2015 to inspect at 'platform-style' businesses i.e., prescribed persons who engage contract workers at or through their premises. A 'platform-style' business that contravenes these display obligations shall be guilty of an offence and shall be liable on summary conviction to a Class C fine, currently up to €2,500.

Why are 'cash tips' not fully regulated?

While employers will be required to include detail on how cash tips are dealt with when displaying their policy towards tips and gratuities, there will be no other regulation of 'cash tips'.

Cash left voluntarily simply isn't traceable. It may never even come under the control of the employer. That means there will not be evidence on which to base enforcement actions.

Payment of tips and gratuities by electronic means, in contrast to cash tips paid directly to the worker, means that the employer is in control of how these tips and gratuities are distributed. Electronic payments create an evidential trail that can be examined if there is a complaint.

With an ever-increasing number of ways of 'tipping' using 'cash-less' and 'contact-less' apps, the payment of tips by electronic means may well become the predominant way of tipping staff into the future. The electronic record generated by this payment method will facilitate investigation by the Workplace Relations Commission (WRC) in the event of a complaint being made.

It is not possible to extend this legal entitlement to cash tips as they are often collected or received directly by employees and are not controlled by the employer.

What is an 'electronic tip'?

An 'electronic tip' is a payment other than by cash. Examples include:

- By debit / credit card
- By smart card
- By way of apps designed to facilitate payment of tips and gratuities
- By means of a 'push notification' app

With an ever-increasing number of ways of 'tipping' using 'cash-less' and 'contact-less' apps, the payment of tips by electronic means may well become the predominant way of tipping staff into the future.

There will be no regulation of tips received by cash or other means. Such tips are not under the control of the employer.

What is the position in respect of service charges?

Any charge called a 'service charge' or anything that would lead a customer to believe it is a charge for service, should be distributed to staff as if it were a tip or gratuity received by electronic means.

Employers are expected to uphold the spirit of the new law and distribute service charges in their entirety to employees, as if they were a tip or gratuity received by an electronic mode of payment.

The Act will also require businesses to clearly display their policy on how mandatory charges are distributed, and if so, the manner in which they are distributed and the amounts so distributed.

What is the position in respect of all other mandatory charges?

The Act will also require businesses to clearly display their policy on how mandatory charges, including services charges, are distributed, and if so, the manner in which they are distributed and the amounts so distributed.

Will employees be consulted by employers when making changes to a tips and gratuities policy?

An employer will be required, before establishing or making a material change to its policy on the way tips or gratuities will be distributed among employees, or on the way in which service charges will be treated, consult with those employees. However, employee consent is not required, and employers retain ultimate discretion in terms of what policy they choose to adopt.

While employee consent is not required, the employee can have recourse to the Workplace Relations Commission (WRC) for adjudication as to whether the distribution is fair in the circumstances.

Under existing employment law, an employer must provide employees with a statement (known as a “Day 5” statement) containing particulars of their employment. This Statement will now include the employer’s policy on the manner in which tips or gratuities and service charges are distributed.

It is an offence not to provide a “Day 5” statement within one month of the employee’s starting date or to provide a statement that is deliberately false or misleading.

Can employers make deductions from employee's tips and gratuities?

Employers cannot use tips and gratuities to make up an employee's contractual wage.

Employers must distribute tips and gratuities and service charges received in electronic form in a manner that is fair in the circumstances. Employers cannot retain any share of tips or gratuities and service charges received by the employer electronically, unless such retention is

- required by law (e.g., deductions for income tax, PRSI, USC etc), or
- to cover the direct costs of distribution (e.g., bank charges, credit card percentage, etc.) or,
- where the employer regularly performs the same kind of work as the employees, such an amount that is fair having regard to the amount of work performed by the employer.

What is an employer required to give to employees in a written statement of tips and gratuities distributed.

Employers must, no later than 10 days from the date on which a distribution of tips or gratuities and service charges received by an electronic mode of payment is made, give employees a written statement of tips or gratuities and service charges distributed. This aids transparency for employees.

The statement must clearly specify—

- (i) the total amount of tips or gratuities and service charges distributed by the employer for the period to which the statement relates, and
- (ii) the amount of tips or gratuities and service charges distributed to the employee to whom the statement is provided.

Employers who make an error in the written statement will not be liable to prosecution, so long as it is not a deliberate misstatement.

As this requirement only applies to electronic tips, the existing electronic records will aid in the efficiency of producing the statement and minimise the administrative burden involved.

Will kitchen and back-office staff receive a fair distribution of tips as well as frontline staff?

We cannot say that a one size fits all approach is appropriate, so the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 does not prescribe how tips and gratuities must be distributed. A fair distribution will be context specific. While employers retain ultimate discretion in deciding the tips and gratuities and mandatory charges policy that they choose to adopt, and employee consent is not required, employees must be consulted on the policy that is introduced.

In relation to redress, an employee can have recourse to the Workplace Relations Commission (WRC) for adjudication as to whether the distribution is fair in the circumstances. An Adjudication Officer of the Workplace Relations Commission (WRC), when adjudicating on a complaint, may consider certain factors when determining whether tips and gratuities and service charges were distributed fairly in the circumstances, including the seniority or experience of an employee, the value of sales generated by them, and the number of hours worked.

In practice, assessment of whether the approach taken by an employer is fair in the circumstances will be a matter for adjudication by the Workplace Relations Commission in the event of a complaint being received.

What are the factors for the Workplace Relations Commission to consider, on receipt of a complaint as to whether a distribution of tips and gratuities and service charges to an employee is fair in the circumstances?

In considering a complaint under Part 4 of the Workplace Relations Act 2015 regarding whether or not a distribution of tips or gratuities to an employee is fair in the circumstances, a WRC adjudication officer must have regard to all of the factors or circumstances that he or she considers relevant, including—

- (a) the seniority or experience of the employee,
- (b) the value of sales, income or revenue generated for the business by the employee,
- (c) the proportion or number of hours worked by the employee during the pay period in which the tip or gratuity was made,
- (d) whether the employee is on a full-time or part-time contract of employment,
- (e) the role and influence of the employee in providing service to customers,
- (f) whether the employee was consulted in relation to the manner of distribution, and
- (g) whether there is an agreement, whether formal or informal, between the employer and the employee providing for the manner in which tips or gratuities are to be distributed.

Who can make complaints to the Workplace Relations Commission (WRC)

The employer's policy on the way tips or gratuities and mandatory charges are treated will become part of the core terms that must be given to a new employee within 5 days of commencing employment. Employees who do not receive statements of their core terms of employment within 5 days may bring a complaint to the WRC.

An employee must have at least one month's continuous service with that employer before they are entitled to refer a complaint to the WRC about their core terms of employment.

Where such a complaint is upheld, an employee may be awarded compensation not exceeding four weeks' remuneration.

Employees may also refer a complaint to the WRC under the Payment of Wages Act in relation to the following:

- any unlawful deductions from tips and gratuities;
- any failure to distribute in a manner that is fair in the circumstances tips or gratuities and service charges received by the employer by an electronic mode of payment;
- any unlawful retention of any share of tips or gratuities and service charges received by the employer electronically, unless such retention is
 - required by law (e.g., deductions for income tax, PRSI, USC), or
 - to cover the direct costs of distribution (e.g., bank charges), or
 - where the employer regularly performs the same kind of work as the employees, such an amount that is fair having regard to the amount of work performed by the employer.

Where a complaint is upheld, an employee may be awarded compensation by an Adjudication Officer who can award redress or compensation under the Payment of Wages Act.

If you feel your employer has breached any of the above employment legislation you can make a complaint to the Workplace Relations Commission. Your complaint must be presented within 6 months of the date of the alleged breach. You can submit your complaint using the WRC on-line form see:

www.workplacerelations.ie.

What is the position in respect of Tronc Schemes?

A Tronc scheme is a common fund into which tips or gratuities and service charges are paid to be divided out amongst staff according to a certain formula. An employer has no role in determining the allocation of tips in a Tronc Scheme. Troncs are common in the hospitality and gambling leisure sectors.

A 'troncmaster' is a person, other than an employer, who is responsible for all arrangements for sharing tips amongst employees and for all aspects of operating a PAYE scheme. A 'troncmaster' may be held liable for any failure to deduct tax from payments from the tronc.

The operation of tronc schemes is unaffected by the Act.

Are Tips and Gratuities and service charges liable to Tax?

There is no change in the tax treatment of tips or gratuities and service charges under the Act.

All tips and gratuities and service charges are chargeable to income tax under Schedule E of the Taxes Consolidation Act (TCA) 1997. Any charge called a 'service charge' or anything that would lead a customer to believe it is a charge for service, will have to be distributed to staff as if it were a tip or gratuity received by electronic means and these are also chargeable to income tax.

Tips and gratuities and service charges must be included by employees in their tax returns, (where these have not already been accounted for by an employer or tronc master), and employers or tronc masters must deduct tax where they are distributed through payroll / troncs. If customers give cash tips directly to employees or leave them on the table and individual employees keep them without any involvement from the employer, then the employer has no responsibility or liability towards the tax treatment of these tips.

In these circumstances, it is the responsibility of the individual employee to advise Revenue of the amounts of money received by way of tips and gratuities and service charges. The tax will then be recovered by way of an adjustment to the employee's personal tax position.

Also, while tips and gratuities may be perceived as a gift in the sense that it is a voluntary payment, such tips are given as a reward for services rendered during the individual's employment. This is a key distinction between personal gifts and tips. If the individual was not working in that position or role, they would not have received the tip. Tips are explicitly linked to the service being provided by the recipient in the course of their employment and are not made on grounds purely personal to the individual. They are payments made in return for being an employee. As such, tips cannot be classified as a gift and are therefore assessable to income tax.

Will it be an offence for an employer not to display a policy on tips, gratuities, and mandatory charges?

Yes, the purpose of creating an offence provision is to ensure greater clarity around an employer's policy on tips or gratuities and mandatory charges for all parties.

It is important to point out that the objective of the Workplace Relations Commission (WRC), in its compliance and enforcement function, is to seek to achieve compliance on a voluntary basis and, where possible, to avoid recourse to legal proceedings which are both expensive and time consuming to undertake.

A new offence provision has been inserted into the Payment of Wages Act 1991. Under this new Section 4E, an employer who contravenes the display obligations of subsection (1) of that section shall be guilty of an offence and shall be liable on summary conviction to a Class C fine, currently up to €2,500. Subsection (1) sets out an employer's obligations regarding the display notice.

The potential cost implications of implementing the offence provisions of this Act will include the investigation costs of WRC Inspectors, the legal costs of the WRC in securing the potential prosecutions and the costs to the Courts Service in terms of progressing the prosecutions through the courts. However, the WRC will be entitled to recover its legal costs 'from the defendant where a successful prosecution is obtained.

What is the Statutory Review Period

The inclusion of a statutory review process in the Act will allow for the impact of the legislation to be assessed once it has been in place for a year, and to make any changes if required.

The Act will be reviewed after one year in operation, when employers, employees and customers all have experience of how the legislation works in practice.

The review must be completed within six months and laid before the Oireachtas. This will help determine what further changes, if any, may be required.

Who was consulted when making Regulations under the Act

When making Regulations under the Act, the Minister for Enterprise, Trade and Employment is required to consult with—

- a. such organisations as the Minister considers to be representative of the employers to which the regulations relate, or a substantial number of such employers, and
- b. a person, group, or organisation that the Minister considers to be representative of a substantial number of employees of the employers to which the regulations relate, and
- c. the Minister may consult with such persons (if any), other than persons referred to in paragraphs (a) and (b), as the Minister considers appropriate having regard to the circumstances.

The Minister undertook such a consultation process when making the Regulations to commence the Act, to define the classes of employers to whom the Act applies and to prescribe the manner by which an employer must display a tips and gratuities notice. The Minister consulted with the following stakeholders, some of whom made submissions to the Low Pay Commission Report 2018 “A Review of Current Practices in relation to Tips & Gratuities”. The Minister also consulted a number of relevant Government Ministers and Regulatory Agencies:

Employer Bodies:

1. Ibec – Irish Business Employers Confederation
2. Irish SME Association
3. Restaurants Association of Ireland
4. Licensed Vintners Association (LVA)
5. Irish Hotels Federation
6. Irish Taxi Drivers Federation
7. The Gaming and Leisure Association of Ireland

Employee Bodies:

1. SIPTU
2. UNITE the Union

Government Ministers and Regulatory Agencies

1. Minister for Tourism, Sport, Media, Arts, Culture
2. Minister for Transport
3. Minister for Justice
4. Competition and Consumer Protection Commission (enforcement of consumer rights)
5. Workplace Relations Commission (enforcement of employment rights)
6. National Transport Authority (regulator of taxis, coach, and limousine hire etc.)

What costs and benefits arise for employers and employees under the Act

There will be additional administrative costs imposed on businesses in the provision of additional or amended information in an employee's written statement (i.e., contract of employment) and in the timing and means by which such information is provided.

Employers to whom the Act applies must, no later than 10 days from the date on which a distribution of tips or gratuities and service charges is made, give employees a written statement of tips and gratuities and service charges distributed.

Employers and platform-style businesses (referred to in the Act as 'prescribed persons') to whom the Act applies will be required to display information on the manner in which tips or gratuities and mandatory charges are shared or distributed to employees or 'contract workers'.

In relation to benefits, employees are better protected as the Act will:

- provide clarity on the meaning of tips, gratuities, and service charges;
- place tips and gratuities outside the scope of a person's contractual wages;
- oblige employers to display prominently their policy on the distribution of both cash and card tips and mandatory charges, including service charges; and
- oblige employers to distribute in a manner that is fair in the circumstances tips and gratuities and service charges that are received in electronic form i.e., through cards or smart phones.

Employees will have an entitlement to make a complaint to the Workplace Relations Commission (WRC) in relation to unlawful deductions from their tips and gratuities and service charges.

Appendix 1

The following is a sample tips and gratuities notice.

Tips and Gratuities Notice

In compliance with section 4E of the Payment of Wages Act 1991

(as inserted by section 3 of the Payment of Wages (Tips and Gratuities) Act 2022)

This notice advises employees and customers on how tips, gratuities, service charges and other mandatory charges are treated on this premises.

Tips and Gratuities

This section of the notice should detail the proportion of tips and gratuities, both cash and electronic (i.e., paid by debit, credit, or smart card), that go directly to an employee and how electronic tips and gratuities are distributed (e.g., paid directly to individual employees or pooled and shared at end of period, and / or paid through a troncmaster system etc.)

- Cash
- Electronic (card payments)
- How tips are distributed

Service Charges

In compliance with section 4D of the Payment of Wages Act 1991 (as inserted by section 3 of the Payment of Wages (Tips and Gratuities) Act 2022), any charge called a 'service charge' or anything that would lead a customer to believe it is a charge for service, will be distributed to staff as if it were a tip or gratuity received by electronic means.

Mandatory Charges

This section of the notice should detail if any mandatory charges, including service charges, are applied, what those charges are for, how they are treated, and if any portion of those charges go to employees as a tip or gratuity.

Tips and Gratuities paid by an electronic mode of payment.

There is a statutory requirement that employer must distribute to their employees any tips or gratuities received by the employer by an electronic mode of payment. This does not extend to cash tips.

Appendix 2

The following are examples of disclosures that businesses may wish to consider using:

Example A:

We do not add a service charge to your bill.

100% of all tips, gratuities and service charges received are fully distributed to staff in line with the Payment of Wages (Tips and Gratuities) (Amendment) Act 2022.

Example B:

This restaurant adds a mandatory charge of [xx] % to customers' bills to cover the cost of [insert text].

Ten per cent of any mandatory charge is retained by the business to cover the charges we incur in processing your payment, card fraud losses and administration costs in distributing sums to staff. The remaining ninety per cent is distributed to staff.

All cash tips go to the staff.

The amount available for staff in the restaurant is shared out through a system controlled by a staff representative.

Or

For every €1 received in mandatory charges, the staff keep 70c, 10c covers business costs and administration and 20c goes to the business [this includes deductions for breakages, till shortages and walk-outs]. All cash tips go to the staff.

Example C:

If you choose to leave a tip through a card, we will retain [xx] per cent to cover the charges we incur in processing your payment. This is considered fair in the circumstances. The remainder is distributed to staff.

Or

For every €1 received in card tips, [xx] cents is shared amongst the staff and [yy] cents covers processing costs.

Appendix 3

Sample core term texts for inclusion in Day-5 Written Statement for Workers in accordance with section 3 (1A) of the Terms of Employment (Information) Act 1994 – to be used as necessary

We apply a mandatory charge of [xx] % to customer bills for service. The business will retain [xx] % [this covers overheads / administration of the tronc / card handling charges]. The remainder is distributed to staff.

Any charge called a 'service charge' or anything that would lead a customer to believe it is a charge for service, will be distributed to staff as if it were a tip or gratuity received by electronic means.

Service charges together with any non-cash tips or gratuities added by customers are distributed to workers through a tronc.

[Name] is the tronc master responsible for the administration of the collection and distribution of service charges, tips, and gratuities paid through the tronc.

By using this system, service charges and any other pooled tips and gratuities, are able to be distributed to you. Payments are then made to you with any income tax, PRSI, and USC due having been deducted.

If you receive cash directly from customers or cash tips have been left on the table these belong to you and it is up to you to decide with other members of staff if you retain or pool them. Cash tips are counted as earnings for income tax purposes, and it is your responsibility to make proper disclosure to Revenue in respect of these earnings.

During periods of leave (including annual leave, sick and all other forms of paid leave) you will be paid your basic wage.

[For businesses with a tronc: The tronc master will inform you about the arrangements for the distribution of service charges, tips, and gratuities during periods of leave.]

[For businesses without a tronc: The arrangements for the distribution of service charges, tips, and gratuities during periods of leave are (business to insert).]

Further Information

Information on employment legislation is available from the Workplace Relations Commission's Information Centre at 0818 80 80 90 and on www.workplacerelations.ie. Enquiries may also be made using the WRC Contact Page on this website.



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