



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

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

Regulatory Impact Assessment (RIA)

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Section 1 Executive Summary

Department:

Enterprise, Trade and Employment

Title of Legislation:

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

Stage:

Drafting

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Policy options considered

1. Do nothing
2. Legislate for how tips and gratuities are treated in the workplace.

Preferred option:

Option 2 is the preferred option: - Draft a Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022 with the following **provisions**:

- a) prohibit the use of tips and gratuities to ‘make up’ contractual rates of pay,
- b) provide that electronic tips and gratuities should be paid out to workers in a fair and transparent manner,
- c) provide for a requirement on employers to clearly display their policy on how tips, gratuities and mandatory service charges are distributed, and
- d) prohibit an employer from retaining any share of tips received electronically, unless there is a legitimate reason eg tax, bank charges, or the employer carries out the same or similar work as the employees.

Options

Costs

Benefits

Impacts

<p>3 <u>Direct and Indirect costs.</u></p> <p>Direct costs – There are no direct costs that will be imposed on businesses.</p> <p>In relation to public sector costs, the Bill contains some implications for inspection and compliance work of the Workplace Relations Commission (WRC). However, these can be accommodated within the annual budget provisions for the WRC.</p> <p>Indirect costs – there may be some minor administrative costs to industry with employers having to display their policy towards tips and gratuities and provide a statement to workers when a payment is being made.</p>	<p>It will improve worker’s rights and entitlements.</p> <p>Employees are better protected as the Bill will prohibit the use of tips and gratuities to ‘make up’ contractual rates of pay.</p> <p>Employers will also be required to distribute electronic tips and gratuities to workers in a fair manner.</p> <p>There will be greater transparency for customers and workers as employers will be required to clearly display their policy on how tips, gratuities and mandatory service charges are distributed.</p>	<p>The proposals will result in beneficial impacts on low-paid and vulnerable groups especially those working in hospitality and other service delivery jobs.</p> <p>It is important that the tourism and hospitality sectors are seen as a valued and sustainable career choice, and this will bring clarity and transparency to this important aspect of the tourism sector work experience.</p> <p>The Bill will provide clarity and transparency on the meaning of tips, gratuities and service charges.</p> <p>The proposed Bill will have a positive impact on the rights of citizens.</p>
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Section 2 – Description of policy context and objectives

2.1 Policy Context

The Payment of Wages (Amendment) (Tips and Gratuities) Bill was previously brought forward by Regina Doherty, former Minister for Social Protection, in December 2019, and it underwent pre-legislative scrutiny before the Joint Committee on Employment Affairs and Social Protection. The 'Report on Pre-Legislative Scrutiny of the General Scheme of the Payment of Wages (Amendment) Bill 2019', was published on 11th November 2019. The legislation fell when the General Election was called in early 2020.

As the scrutiny process was fully completed in 2019 and a final Report issued, no further pre-legislative scrutiny is required.

The Government agreed that heavy regulation in this sector is not necessary, but there are a few objectives that are worth pursuing. It is important that the tourism and hospitality sectors are seen as a valued and sustainable career choices and this legislation will bring clarity and transparency to this important aspect of the tourism sector work experience. The Bill will also provide clarity and transparency on the meaning of tips, gratuities and service charges.

Without being heavy handed, Government can make minor changes to existing legislation that will address the more contentious issues relating to the treatment of tips and gratuities. On 9th October 2020, responsibility for employment rights policy transferred to the Department of Enterprise, Trade and Employment (DETE) (S180/20/10/2522). The legislative amendments are now being progressed by DETE.

2.2 Purpose of the Bill

There are 4 main aims for this Bill:

1. 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. The policy intent is to ensure tips and gratuities are additional to the wage and are not subsumed into the wage.
2. An important aim will be to provide a legal entitlement for workers to receive tips and gratuities paid in electronic form (i.e., by debit or credit card) with a provision that these tips and gratuities should be paid out to workers in a fair and transparent manner. 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.
3. An employer himself/herself may not retain any share of tips received electronically, unless such retention is required by this Act, e.g., to pay tax, or bank charges arising from providing electronic modes of tipping, or only where he or she regularly performs to a substantial degree the same work performed by some or all of the employees, such amount that is fair and reasonable in the circumstances.
4. It will also require businesses to clearly display their policy on how tips, gratuities and mandatory 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 Bill 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 apps.

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’ as this is, according to the Workplace Relations Commission, ‘unworkable’. Cash tips are not accountable and are not under the control of the employer. 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. It is believed that the electronic record generated by this payment method will facilitate inspections 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 the worker(s) and are not controlled by the employer.

3. Immediate Objectives

In accordance with Government Decision S180/20/10/2428 of 26th October 2021, the legislation will prohibit the use of tips and gratuities to ‘make up’ contractual rates of pay, provide that electronic tips and gratuities should be paid out to workers in a fair manner, and provide for a requirement on employers to clearly display their policy on how tips, gratuities and mandatory service charges are distributed. This represents a relatively small set of amendments but a positive step towards improving workers’ rights and entitlements, particularly of lower paid workers, as well as providing transparency for customers.

4. Identification and Description of Policy Options

4.1 Option 1 “Do Nothing”

The “do nothing” principle would fail to address the commitment by Government to deal with the more contentious issues relating to the treatment by employers of tips and gratuities in the workplace.

4.2 Option 2 “Legislate for how tips and gratuities are treated in the workplace”.

To implement the Government Decision and achieve the policy objectives set out.

4.3 Conclusion

For the purposes set out above, Option 2 – Legislate for how tips and gratuities are treated in the workplace is the appropriate course to take.

5. Consultation

This Bill was previously brought forward by Regina Doherty, former Minister for Social Protection, in December 2019, and consultations with relevant industry representatives and trade unions were undertaken in 2019.

It underwent pre-legislative scrutiny before the Joint Committee on Employment Affairs and Social Protection. The ‘Report on Pre-Legislative Scrutiny of the General Scheme of the Payment of Wages (Amendment) Bill 2019’, was published on 11th November 2019. The legislation fell when the General Election was called in early 2020. As the scrutiny process was fully completed in 2019 and a final Report issued, no further pre-legislative scrutiny is required.

Officials in the Department of Enterprise, Trade and Employment met with representatives including UNITE and the Restaurants Association of Ireland in January 2022.

6. Costs and Benefits

There are no direct costs that will be imposed on businesses. In relation to costs on the Exchequer, although the Bill contains some implications for inspection and compliance work of the Workplace Relations Commission (WRC), these can be accommodated within the annual budget provisions for the WRC. As the legislation relates to private business where tipping typically applies, there is no further cost or burden on the public sector.

In relation to benefits, employees are better protected as the Bill will prohibit the use of tips and gratuities to 'make up' contractual rates of pay. Employers will also be required to distribute electronic tips and gratuities to workers in a fair manner. There will be greater transparency for customers and workers as employers will be required to clearly display their policy on how tips, gratuities and service charges are distributed.

7. Impacts

7.1 Impacts - poverty proofing

The proposals will result in beneficial impacts on low-paid and vulnerable groups especially those working in hospitality and other service delivery jobs.

7.2 Impacts - rights of citizens

The proposals will have a positive impact on the rights of citizens.

7.3 Impacts – Gender

As women are more likely than men to be in lower-paid employments, where tipping by customers is typical, particularly in the tourism and hospitality sectors, the proposals would have a positive impact for women.

Also, as lone parents are more predominantly women, this will have a beneficial impact for this group.

There are no impacts for the following: Jobs, North-South, East-West Relations, Competitiveness & Industry Costs, Rural Communities, Quality Regulation, People with Disabilities.

8. Compliance burden

There may be some minor costs to industry with employers having to prominently display a statutory Notice on the employer's tips and gratuities and mandatory service charges policy. Information will be provided in the form of templates for Policies on tips to assist employers develop their own Policy and to help them identify the types of information and procedures that should be outlined and displayed in the Policy. These templates will be promoted and circulated widely to assist with compliance and help minimise the burden on micro and small businesses.

The requirement for employers to provide a statement to workers when a payment is being made will also impose a burden. 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.

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