



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

Statutory Review of the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022

(No. 23 of 2022)

Public Consultation

Executive Summary

The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 brought, for the first time in Ireland, clarity, and transparency to how tips, gratuities, and mandatory charges are treated. This benefits both workers, particularly in the hospitality sector, and customers. Employees have recourse to the Workplace Relations Commission (WRC) if they feel they have been unfairly treated in relation to the distribution of tips and gratuities. The Act requires that a statutory review process be undertaken that will allow the impact of the legislation to be assessed once it has been in place for a year.

This public consultation document sets out:

- the background to the current legislative framework for tips and gratuities,
- an overview of the key requirements of the Act,
- the policy objectives of the Act, and
- the operation of the Act to date.

Submissions should be made by 3pm on Thursday 22nd of February 2024 (late submissions will not be accepted).

Please email to: employmentrights@enterprise.gov.ie using the subject line **“Public consultation on the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022.”**

or

Post to:

Peter Brennan
Employment Rights Policy Unit
Department of Enterprise Trade and Employment
Earlsfort Terrace

Dublin 2

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

BACKGROUND

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

There was also no legislation obliging 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 were examples where some tips were simply included as part of overall business income or used to contribute to employees' contractual base wages.

PURPOSE OF THE ACT

The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 was enacted on 20 July 2022 and was commenced on 27th October 2022¹. However, it did not take effect until 1 December 2022² when Regulations were made specifying those sectors to which it applies.

¹ S.I. No 543 of 2022 Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 (Commencement) Order 2022.

² S.I. No 544 of 2022 Payment of Wages Act 1991 (Application of Sections 4B to 4F) Regulations 2022

The Act provides clarity on the meaning 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 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. 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.

OPERATION OF THE ACT

The Workplace Relations Commission (WRC) is the statutory body with responsibility for enforcing and seeking compliance with the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022.

The objective of the 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.

Employees who either do not receive statements of their core terms of employment within 5 days or who receive a statement that is deliberately false, or misleading may refer a complaint to the WRC.

Employees may also refer a complaint to the WRC in relation to

- any unlawful deductions from tips and gratuities.
- any failure to distribute in a manner that is fair in the circumstances tips or gratuities received by the employer by an electronic mode of payment.

- any unlawful retention of any share of tips or gratuities 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.

Since the commencement of the Act, the WRC has carried out 1,066 inspections in the food and beverage sector, 230 in the Hair and Beauty sector and 73 in the Hotel sector. There were 113 contraventions of the Act overall. Of these, 96 related to the failure to display a Tips and Gratuities Notice, 11 related to the failure to provide a written statement to employees in relation to distribution of tips and gratuities and, 6 related to the failure to display a Contract Workers Tips and Gratuities Notice.

STATUTORY REVIEW PROCESS

A statutory review process has been included in the Act that allows for the impact of the legislation to be assessed once it has been in place for a year, when employers, employees and customers all have experience of how the legislation works in practice, and to make any changes if required. 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.

PUBLIC CONSULTATION QUESTIONS

Should additional employers/sectors be covered by the Act?

The Minister 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.

Question 1a: Should additional employers/sectors be covered by the Act?

Question 1b: Should any existing employers/sectors be removed from the Act?

Response:

Tips and Gratuities Notice

Every employer is 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 –

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

An employer who contravenes these display obligations is guilty of an offence and liable on summary conviction to a Class C fine, which currently is up to €2,500.

The Minister has made Regulations which prescribe the different ways that the tips and gratuities notice is 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 is not required to display a notice unless the driver is an employee. A hotel or restaurant is required to display a notice in such a position as to be clearly visible and easily accessible. A 'platform-style' business is 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 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 each entrance by which consumers may access 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 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 have powers under section 27 of the Workplace Relations Act 2015 to inspect at employer premises. WRC inspectors also have powers to issue a fixed payment notice to an employer who fails to display a required 'Tips and Gratuities Notice'.

Question 2a: In your experience, are the statutory display notice requirements under the Act being adhered to?

Question 2b: Should the display notice requirements be altered and, if so, how?

Question 2c: In your experience, where is the statutory display notice predominantly displayed e.g., entrances, consumer payment areas, websites, and other digital platforms?

Response:

Treatment of “cash tips” under the Act

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

Arguably, 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.

However, some might argue that cash tips under the control of the employer (“controlled tips”) or “pooled tips” should be treated the same way as tips paid on a card. Employers are obligated to display their policy towards cash tips and include the policy in an employee’s terms of employment. These, together with statements from employees, could constitute evidence on which to base enforcement actions.

Question 3a: Should “Cash tips” be included under the Act and, if so, how would any enforcement challenges be met?

Question 3b: Should a distinction in law be made between “controlled tips”, “pooled tips”, and “direct tips” (to an employee) and what should these distinctions seek to achieve?

Response:

Treatment of “electronic tips” under the Act

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. Methods of cashless tipping include apps which customers can download to make tips, and links or QR codes that customers can use to make tips. Sometimes there might be a physical terminal that customers can tap with a contactless card. 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.

Question 4a: In your experience, are employees receiving all of their ‘electronic tips’ as required under the Act?

Question 4b: In your experience, what payment methods are currently in use when paying or distributing tips to employees?

Question 4c: In your experience, to what extent are apps being used by employees to receive “direct tips”?

Question 4d: In your experience, have there been any new mechanisms put in place to ensure transparency in the distribution of electronic tips and gratuities among employees?

Response:

Treatment of “contract workers” under the Act.

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’) is required to display information on the manner in which tips or gratuities and mandatory charges are shared or distributed to ‘contract workers’.

Arguably, a ‘contract worker’ has an employment relationship with a ‘prescribed person’ that enables the full rights in respect of tips and gratuities to be conferred upon them in the same way that fall to employees.

Question 5a: Are ‘Contract Workers’ adequately protected under the Act?

Question 5b: In your experience have there been any situations where a prescribed person is in control of tips and does not distribute these in full to ‘contract workers’? Please describe

Response:

Treatment of “service charges” under the Act.

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.

The Act also requires 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.

It is an offence for an employer to use a term such as ‘service charge’ that leads customers to believe it will be distributed to employees if they do not actually distribute the charge concerned.

Question 6: Should ‘service charges’ defined under the Act be further reviewed, and if so, how?

Response:

Complaints on the fair distribution of tips and gratuities under Part 4 of the Workplace Relations Act 2015.

The Act does not prescribe how tips must be distributed as a fair distribution may be context specific. However, all employees must be consulted on the policy that is introduced.

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.

Question 7a: What do you believe are the factors that should be considered under the Act when determining whether the distribution of tips and gratuities to an employee is fair?

Response:

The use of ‘Tronc Schemes’ in distributing tips and gratuities to employees.

A Tronc scheme is a common fund into which tips and gratuities 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 have been used 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.

There may be advantages in operating a tronc schemes and these include:

- o the employer has no role in deciding how tips are distributed.
- o tips and gratuities are distributed in a fair and transparent manner.
- o there can be payroll and administration efficiencies.

The disadvantages in operating a tronc scheme include the payroll and administration costs that may outweigh any benefits where an employer has very few employees.

The operation of tronc schemes is unaffected by the Act.

Question 8a: How prevalent are the use of ‘Tronc Schemes’ in the distribution of tips and gratuities to employees?

Question 8b: Are there benefits to encouraging the use of ‘Tronc Schemes’ in the distribution of tips and gratuities?

Question 8c: What has been your experience with the use of ‘Tronc Schemes’ in the distribution of tips and gratuities to employees?

Response:

What costs and benefits have arisen for employers and employees since commencement of the Act?

There will likely have been some additional administrative costs for 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 is made, give employees a written statement of tips and gratuities distributed.

Employers and platform-style businesses (referred to in the Act as 'prescribed persons') to whom the Act applies are 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 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 have an entitlement to make a complaint to the Workplace Relations Commission (WRC) in relation to unlawful deductions from their tips and gratuities.

Question 9a: Have any significant costs arisen for employers under the Act, and, if so, please quantify?

Question 9b: To what extent have employees benefitted under the Act, and are there other areas not covered by the Act that would be beneficial to employees' rights?

Question 9c: Has the Act contributed to improved workplace relations or employee satisfaction in the sectors covered?

Question 9d: Has the Act had any impact on the overall compensation and income levels of employees in the sectors covered?

Response:

‘Code of Practice’ for tips and gratuities?

Codes of Practice are written guidelines, agreed in a consultative process, setting out guidance and best practice for employers and employees with respect to compliance with employment legislation.

This statutory function fits within the Workplace Relations Commission’s overall remit of promoting improvement and maintenance of good workplace relations; promoting and encouraging compliance with relevant employment, equality and equal status legislation and Codes of Practice; conducting reviews of, and monitoring developments in, workplace relations generally.

While failure to follow a Code prepared under section 20(1)(a) of the Workplace Relations Act, 2015 is not an offence in itself, section 20(9) provides that in any proceedings before a Court, the Labour Court or the WRC, a Code of Practice shall be admissible in evidence and any provision of the Code which appears to the Court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

Question 10: Is there a benefit to introducing a ‘Code of Practice’ for tips and gratuities for the purpose of promoting fairness and transparency in the distribution of qualifying tips, gratuities, and service charges, and what would this look like?

Response:

Any Other Observations

In any reform of the statutory framework on tips and gratuities, the Department will seek to achieve a balance between the rights of all stakeholders. With this in mind, you are invited to make any further suggestions for legislative changes with reasons to support your proposed changes and any evidence or arguments in support. Evidence might be factual, legal, or based on your experience.

Question 11: What further suggestions for changes, if any, would you make? Please explain the reason for your proposed change, and where possible, advance evidence or arguments in support. Evidence might be factual, legal, or based on your experience.

Response:

Conclusion

Most employers do their best to ensure tips are distributed fairly among staff. The Act has sought to ensure that this is the case across the board, giving employees a new legal right over their tips.

For customers, many people are often unsure about where their tips go and what the difference between a tip and a service charge is. Under the Act, establishments are now required to clearly show how everything is distributed and where it goes. This goes for whether you pay by cash or card.

An important requirement of the Act is that an employer must now provide a statement to workers showing the amount of electronic tips obtained in a period and the portion paid to the individual employee for that particular period. This ensures transparency for workers.

The Act is aimed at improving the rights and entitlements of workers, particularly of lower paid workers, as well as providing transparency for customers.

Through this public consultation process, you have an opportunity to fairly comment on the success or otherwise of the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022. We welcome your contribution and ask, in as much as possible, that your comments are evidence backed and pertinent to the topic being addressed.

Thank you for your cooperation.

Freedom of Information and Data Protection

All submissions received are subject to the Freedom of Information Act 2014 and as such may be released publicly in response to any relevant FOI requests received.

In responding to this consultation, all parties should clearly indicate where their responses contain personal information, commercially sensitive information, or confidential information which they would not wish to be released under FOI or otherwise published.

The [Department's Data Protection Data Privacy Notice](#) is available on the enterprise.gov.ie website and explains how and when the Department collects personal data, why it does so and how it treats this information. It also explains citizen's rights in relation to the collection of personal information and how stakeholders can exercise those rights.