



Template for application of the SME Test

Payment of Wages (Tips and Gratuities) (Amendment)

Bill 2022

Screening question

Q. To what extent is the proposed legislation relevant for SMEs?

Not relevant Relevant Highly relevant

The following questions are relevant to consideration of the above question:

- Are SMEs within the scope of the legislative initiative?
- Does the initiative specifically target SMEs?
- Will SMEs be impacted directly or indirectly by the initiative?
- Are SME impacts likely to be more substantial than on other companies, for example, in terms of adverse effects?

If 'Relevant' or 'Highly Relevant', please proceed to complete Sections 1-5.

1. Identification of affected businesses

Q1a: Please identify the types of SMEs that will be directly affected by the proposed legislation.

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A



Q1b: Please identify the types of SMEs that will be indirectly affected by proposed legislation (i.e. SMEs not in scope, but potentially affected indirectly, for instance through impacts on supply chain)

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A

Q1c: Has an estimate been carried out of the numbers of micro, small and medium companies affected directly or indirectly by the legislation?

Yes No N/A

There is no data available as to the number of companies in the hospitality and other defined sectors that currently operate a tips and gratuities policy.

Q1d: Will the proposed legislation have a greater impact on SMEs in any particular economic sector?

Yes No

If Yes, please specify.

The Payment of Wages (Tips and Gratuities) (Amendment) Bill 2022 will have a greater impact on SMEs in sectors that have to deal with distribution of electronic tips to employees and the display of a tips and gratuities notice. This is particularly relevant for SMEs in the hospitality and retail sectors. However, the costs of displaying a notice are not considered significant and employers already operate payroll systems.

Q1e: Will the proposed legislation have a greater impact on SMEs in any particular region?

Yes No

If Yes, please specify.



2. Consultation

2.1 What consultation will take or has taken place to capture input from the SME community, particularly those potentially most impacted by this initiative?

Public consultation

Other (e.g. stakeholder meetings, targeted consultation)

N/A

If Other, please provide details:



3. Assessment of the impacts on SMEs

Q3a What are the expected positive impacts of the legislation on SMEs (e.g. improved regulatory framework or working conditions, cost savings)?

Impacts of the scheme are universal for all businesses, not specifically SMEs.

1. The Bill will prohibit employers from using tips and gratuities to 'make up' contractual rates of pay. The policy intent is to ensure tips and gratuities are additional to the wage and are not subsumed into the wage.
2. The Bill does not prescribe the manner in which the tips must be distributed. A fair and equitable distribution will be context specific and is likely to consider matters such as staff hours, busy and quiet periods, a worker's role in service delivery, customs and practice etc. These examples are a non-exhaustive list of factors, but these are not prescriptive. In practice, assessment of whether the approach taken by an employer is fair and reasonable will be a matter for adjudication by the Workplace Relations Commission in the event of a complaint being received.
3. The Bill 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 behave.
4. The Bill represents a relatively small set of amendments but is a positive step towards improving the rights and entitlements of lower paid workers as well as providing transparency for customers.

Q3b Will the proposed legislation result in any of the following impacts for SMEs?

- Administrative costs, including the obligation to provide information on the activities or products of the company, including one-off and recurring administrative cost
- Other compliance costs, including the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or



production/service delivery process to meet economic, social or environmental standards.

- Other impacts, including on business entry and exit; competition and competitiveness, whether proposed regulations might discourage, entrepreneurship or innovation; potential impact of any proposed exemption thresholds on business growth; impacts on SME population composition and location.

Yes No

Q3c If yes, please describe impacts, including whether any impacts will affect particular cohorts of SMEs differently, for example based on size (micro, small and medium), age of the business (e.g. start-up costs for new companies), economic sector and geographic location.

The Payment of Wages (Tips and Gratuities) (Amendment) Bill 2022 will give rise to some administrative costs in the display of a tips and gratuities notice or notices within the relevant premises or places of trade. However, the costs of displaying a notice are not considered significant.

5. Assessment of alternative options and mitigating measures

4a If the analysis above has shown that the draft legislation will result in impacts on SMEs, has there been consideration of any measures to mitigate against these impacts, such as less onerous reporting requirements, exemptions for certain cohorts of SME, simplified language etc? (See list of examples of potential mitigating measures on page 5 above)

Yes No N/A

Please provide details.

The costs of compliance with the Payment of Wages (Tips and Gratuities) (Amendment) Bill 2022 are not considered significant and mitigation measures are not deemed necessary.

6. Post-completion of SME Test



5a Do you intend to summarise the outcome of the SME Test, including identified impacts and provision for mitigating measures, under the Impacts section of any Memorandum for Government proposing the legislation?

Yes No N/A

A Regulatory Impact Assessment has already been carried out on the Payment of Wages (Tips and Gratuities) (Amendment) Bill 2022 and was included as part of the initial Memorandum for Government that requested permission to draft the Bill.

5b Do you intend to make this form available publicly on your Department's website?

Yes No

The Regulatory Impact Assessment on the Payment of Wages (Tips and Gratuities) (Amendment) Bill 2022 has been published on the Department of Enterprise, Trade and Employment website and covers costs and impacts on businesses. The Payment of Wages (Tips and Gratuities) (Amendment) Bill 2022 is not SME specific and covers all businesses.