



Number 23 of 2022

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



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[No. 23.]

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

[2022.]

ACTS REFERRED TO

Payment of Wages Act 1991 (No. 25)

Terms of Employment (Information) Act 1994 (No. 5)

Workplace Relations Act 2015 (No. 16)



Number 23 of 2022

PAYMENT OF WAGES (AMENDMENT) (TIPS AND GRATUITIES) ACT 2022

An Act to provide further protection for employees in relation to the payment of wages; to provide for the treatment of certain voluntary payments made to or left for employees and contract workers; to provide for obligations on employers relating to the fair distribution of certain tips and gratuities; to provide for obligations on employers and certain other persons to inform the public of the treatment of tips and gratuities and, for those purposes, to amend the Payment of Wages Act 1991, the Terms of Employment (Information) Act 1994 and the Workplace Relations Act 2015; and to provide for related matters. [20th July, 2022]

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“Act of 2015” means the Workplace Relations Act 2015;

“Minister” means the Minister for Enterprise, Trade and Employment;

“Principal Act” means the Payment of Wages Act 1991.

Amendment of section 1 of Principal Act

2. Section 1 of the Principal Act is amended in subsection (1)—

(a) by the insertion of the following definitions:

“ ‘contract worker’ has the meaning assigned to it in section 4F;

‘mandatory charge’ means a contractually-imposed and receipted payment that—

(a) a customer is required to pay in order to receive certain goods or services provided to the customer by or on behalf of an employer, and

(b) is payable by the customer in addition to an amount payable for the cost of such goods or services;

‘tip or gratuity’ means a payment that is—

- (a) 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, or
- (b) voluntarily made to an employer, or to a person engaging contract workers, 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 distributed to an employee, a group of employees or to a contract worker;”,

and

- (b) in the definition of “wages”—
 - (i) in paragraph (v), by the substitution of “in kind,” for “in kind.”, and
 - (ii) by the addition of the following paragraph after paragraph (v):
 - “(vi) any payment by way of tips or gratuities.”.

Insertion of sections 4A to 4F in Principal Act

3. The Principal Act is amended by the insertion of the following sections after section 4:

“Application of sections 4B to 4F

- 4A.** (1) The Minister may by regulation prescribe an employer or class of employer to which sections 4B to 4E (in so far as they are in operation) apply, and those sections shall apply to employers or classes of employers so prescribed.
- (2) The Minister may by regulation prescribe a person or class of person (whether or not such person is an employer) to whom section 4F (in so far as it is in operation) applies and that section shall apply to persons or classes of person so prescribed.
- (3) When making regulations under subsection (1), the Minister—
- (a) shall have regard to the following:
 - (i) whether or not employers to which the regulations relate are carrying on a business in the State in relation to which the payment of tips or gratuities by customers typically applies;
 - (ii) the likely impact of such regulations on employment, either generally or in the particular economic sector to which the regulations relate;
 - (iii) the impact on the welfare of employees of sections 4B to 4E not applying to their employers;

- (iv) the need for customers of employers to which the regulations relate to be informed as to how tips or gratuities and mandatory charges paid will be treated;
 - (v) the need for employees of employers to which the regulations relate to understand how tips or gratuities will be treated;
 - (vi) the costs, including administrative and financial costs, of sections 4B to 4E applying to the employers to which the regulations relate,
- (b) shall consult with—
- (i) 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
 - (ii) 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) may—
- (i) specify employees of employers to which the regulations relate, or classes of such employees, in respect of whom the regulations shall not apply, and
 - (ii) consult with such persons (if any), other than persons referred to in paragraph (b), as the Minister considers appropriate having regard to the circumstances.
- (4) When making regulations under subsection (2), the Minister—
- (a) shall have regard to the following:
- (i) whether or not persons to whom the regulations relate are carrying on a business in the State in relation to which the payment of tips or gratuities by customers typically applies;
 - (ii) the likely impact of such regulations on employment, either generally or in the particular economic sector to which the regulations relate;
 - (iii) the impact on the welfare of contract workers of section 4F not applying to the persons in respect of whom they are contract workers;
 - (iv) the need for customers of persons to whom the regulations relate to be informed as to how tips or gratuities and mandatory charges paid will be treated;

- (v) the need for contract workers of persons to whom the regulations relate to understand how tips or gratuities will be treated by the person;
 - (vi) the costs, including administrative and financial costs, of section 4F applying to the persons to which the regulations relate,
- (b) shall consult with—
- (i) such organisations as the Minister considers to be representative of the persons to whom the regulations relate, or a substantial number of such persons, and
 - (ii) a person, group or organisation that the Minister considers to be representative of a substantial number of contract workers working for such persons,
- and
- (c) may—
- (i) specify employees of persons to which the regulations relate, classes of such employees or contract workers in respect of such persons in respect of whom the regulations shall not apply, and
 - (ii) consult with such persons (if any), other than persons referred to in paragraph (b), as the Minister considers appropriate having regard to the circumstances.

Treatment of certain tips and gratuities

- 4B.** (1) An employer to which this section applies shall, in a manner that is fair in the circumstances and in accordance with this Act, distribute to his or her employees any tips or gratuities received by the employer by an electronic mode of payment.
- (2) Subject to subsection (3), an employer shall not retain any share of tips or gratuities received by the employer by an electronic mode of payment.
- (3) An employer may only retain a share of tips or gratuities received by the employer by an electronic mode of payment—
- (a) in so far as such retention is required or permitted by this Act, or
 - (b) where that employer—
 - (i) regularly performs, to a substantial degree, the same work performed by some or all of the employees, and
 - (ii) retains a share of tips or gratuities received by an electronic mode of payment that is no more than an amount that is fair and reasonable in the circumstances having regard to the amount of such work so performed by that employer.

- (4) In considering a complaint under Part 4 of the Workplace Relations Act 2015 regarding whether or not a distribution under subsection (1) of tips or gratuities to an employee is fair, an adjudication officer shall 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.
- (5) (a) An employer to which this section applies shall, no later than 10 days from the date on which a distribution of tips or gratuities is made, give or cause to be given to an employee a statement in writing specifying clearly—
- (i) the total amount of tips or gratuities distributed by the employer for the period to which the statement relates, and
 - (ii) the amount of tips or gratuities distributed to the employee to whom the statement is provided.
- (b) The employer shall take such reasonable steps as are necessary to ensure that both the matter to which the statement under paragraph (a) relates and the statement are treated confidentially by the employer and his or her agents and by any other employees.
- (6) Where a statement under this section contains an error or omission, the statement shall be regarded as complying with the provisions of this section if it is shown that the error or omission was made by way of a clerical mistake or was otherwise made accidentally and in good faith.
- (7) An employer to which this section applies shall, before establishing or making a material change to its policy on the manner in which tips or gratuities shall be distributed amongst employees, or on the way in which mandatory charges shall be treated, consult with those employees.

- (8) An employer who contravenes subsection (5)(a) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

Prohibition on certain deductions

4C. An employer to which this section applies shall not—

- (a) without prejudice to the generality of section 5(1), make a deduction from an employee's wages in respect of tips or gratuities made to, or left for, an employee, or
- (b) make a deduction from tips or gratuities to be distributed, in accordance with section 4B, to an employee, other than—
 - (i) as required by or under this Act, by any other statute or by any instrument made under any statute, or
 - (ii) to the extent as is fair and reasonable in order to meet costs directly arising from paying tips or gratuities by means of electronic modes of payment.

Treatment of matters described as service charge

4D. (1) Where an employer to which this section applies—

- (a) describes a charge (including a mandatory charge) imposed on a customer as a 'service charge', or any similar or cognate term, whether in a tips and gratuities notice or in any other medium, or
- (b) in any other way leads customers to believe that a mandatory charge shall be distributed to employees,

the employer shall treat all payments, whether made by an electronic mode of payment or any other means, received from customers pursuant to such a charge as if any such payment was a tip or gratuity received by an electronic mode of payment.

- (2) An employer who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

Tips and gratuities notice

4E. (1) An employer to which this section applies shall, in accordance with regulations made under subsection (2), display a notice (in this Act referred to as a 'tips and gratuities notice') stating—

- (a) whether or not tips or gratuities are distributed to and amongst employees,
- (b) where tips or gratuities are so distributed to and amongst employees, the manner in which they are distributed and the amounts so distributed,
- (c) whether mandatory charges, or any portion of them, are distributed to and amongst employees, and if so, the manner in which they are distributed and the amounts so distributed, and

- (d) such further or additional information as may be prescribed under subsection (2).
- (2) The Minister may by regulations prescribe, either generally or in relation to particular employers or classes of employers to which this section applies—
 - (a) particulars of the information referred to in paragraphs (a) to (d) of subsection (1) that shall be contained in a tips and gratuities notice,
 - (b) further or additional information relating to tips or gratuities, or mandatory charges, in addition to the information referred to in paragraphs (a) to (c) of subsection (1), that shall be contained in a tips and gratuities notice, and
 - (c) the manner in which, or particular locations at which (including on a website or other online digital platform hosted by the employer, or at the place of business at which employees carry out their employment), a tips and gratuities notice shall be displayed.
- (3) An employer who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

Tips and gratuities notice - contract workers

- 4F.** (1) A person to whom this section applies shall, in accordance with regulations made under subsection (2), display a notice (in this Act referred to as a ‘contract worker tips and gratuities notice’) stating—
- (a) whether or not tips or gratuities are distributed to and amongst contract workers,
 - (b) where tips or gratuities are so distributed to and amongst contract workers, the manner in which they are distributed and the amounts so distributed,
 - (c) whether mandatory charges, or any portion of them, are distributed to and amongst contract workers, and if so, the manner in which they are distributed and the amounts so distributed, and
 - (d) such further or additional information as may be prescribed under subsection (2).
- (2) The Minister may by regulations prescribe, either generally or in relation to particular persons or classes of person to whom this section applies—
- (a) particulars of the information referred to in paragraphs (a) to (d) of subsection (1) that shall be contained in a contract worker tips and gratuities notice,
 - (b) further or additional information relating to tips or gratuities, or mandatory charges, in addition to the information referred to in

paragraphs (a) to (c) of subsection (1), that shall be contained in a contract worker tips and gratuities notice, and

- (c) the manner in which, or particular locations at which (including on a website or other online digital platform hosted by the person, or at the place of business at which contract workers carry out their work or provide their service), a contract worker tips and gratuities notice shall be displayed.
- (3) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.
- (4) In this Act, ‘contract worker’ means a natural person who carries out work other than as an employee, including on a contract for service, for a person to whom this section applies.”.

Amendment of section 6 of Principal Act

4. Section 6 of the Principal Act is amended, in subsection (1)—

- (a) by the substitution of “section 4C or 5” for “section 5”,
- (b) by the substitution of “from the wages or tips or gratuities” for “from the wages”, and
- (c) by the substitution, in paragraph (a), of “the net amount of the wages, or tip or gratuity as the case may be” for “the net amount of the wages”.

Amendment of Terms of Employment (Information) Act 1994

5. Section 3 of the Terms of Employment (Information) Act 1994 is amended, in subsection (1A)—

- (a) in paragraph (e)(ii), by the substitution of “week;” for “week.”, and
- (b) by the insertion of the following paragraph after paragraph (e):

“(f) where sections 4B to 4E (in so far as they are in operation) of the Payment of Wages Act 1991 apply to the employer, the employer’s policy on the manner in which tips or gratuities and mandatory charges (within the meaning of section 1 of that Act) are treated.”.

Amendment of section 27 of Act of 2015

6. Section 27 of the Act of 2015 is amended by the insertion of the following subsection after subsection (8):

“(9) Where an inspector exercises powers under this section in relation to section 4F of the Payment of Wages Act 1991, references in this section to employer shall be read as references to a person to whom the said section 4F applies, references in this section to employee shall be read as references to a contract worker within the meaning of that

Act and references in this section to the employment of persons shall be read as including a reference to the relationship between such persons and such contract workers.”.

Amendment of section 36 of Act of 2015

7. Section 36 of the Act of 2015 is amended, in subsection (5), by the substitution of the following paragraph for paragraph (b):

“(b) sections 4(4), 4B(8), 4D(2), 4E(3) and 4F(3) of the Payment of Wages Act 1991.”.

Amendment of Schedule 5 to Act of 2015

8. The Act of 2015 is amended, in Part 1 of Schedule 5, by the substitution of the following paragraph for paragraph 3:

“3. Sections 4B(1) and (2), 4C and 5 of the Payment of Wages Act 1991.”.

Review of operation of Act

9. (1) The Minister shall, not later than 12 months after the date on which the Minister first makes regulations under subsection (1) or (2), as the case may be, of section 4A of the Payment of Wages Act 1991, begin preparing a report on the operation of the amendments made to that Act by this Act.
- (2) The Minister shall, not later than 6 months after beginning to prepare a report under *subsection (1)*, publish the report and cause a copy of that report to be laid before each House of the Oireachtas.
- (3) In preparing a report under *subsection (1)*, the Minister shall consult with such other Ministers of the Government as he or she considers appropriate.

Short title and commencement

10. (1) This Act may be cited as the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.