

The Employment (Allocation of Tips) Act 2023 “the Tipping Act”

The Tipping Act is not due to come into force until 1st October 2024. This guidance is produced ahead of that to assist members to prepare for it. The implementation date of the Act may be further delayed and we will notify members when it is in force.

Due to come into force on 1st October 2024, the above legislation inserts new sections into the Employment Rights Act 1996 which will create a statutory obligation on employers to allocate tips, gratuities and service charges to workers without deductions.

It will not affect how pool money is dealt with as the employer does not exercise control or significant influence over the allocation of the money.

It does not apply where an individual worker receives and keeps a tip from a customer, with no employer control or involvement.

It does not affect a gift to an employee such as a bottle of wine, which whilst having a value does not have a monetary value which could easily be split.

It could however affect gratuities which are given to trainers by owners to allocate to staff or even where gratuities are given to staff and the employer directs how those are shared out.

The word “**tip**” is used throughout this information sheet – that includes gratuities and gifts.

The detail

Qualifying tips, gratuities and service charge.

- These are employer received tips or certain worker received tips.
- It does not matter how they are paid so if it is cash or alternative method,
- The determining factor is whether
 - the employer receives (in the case of employer received tips) or
 - the employer exercises control or significant influence over the distribution of tips (in the case of worker received tips).
- This is most commonly demonstrated when employers first receive the money and then allocate it to workers.
- It could cover gifts from owners which are given to the employer to pass on to employees, and it could cover gifts from owners where the employee receives the gift, but the employer exercises, control or significant influence over who gets what.

- If an employee receives and keeps a cash tip, with no employer control or involvement, the tip is outside of the scope for the Tipping Act
- The Act does not cover self employed workers.

Distribution of tips

The employer must ensure that the allocation of qualifying tips is fair and the distribution is transparent.

The employer must avoid any unlawful discrimination.

Written Tipping Policy

There must be a written tipping policy which employers must make available to staff under the Tipping Act, unless they receive tips only occasionally and exceptionally.

This can be provided in a physical written document or in an electronic form.

The written policy must include:

- whether the employee requires or encourages customers to pay tips, gratuities and service charges.
- how the employer ensures that all qualifying tips, gratuities and service charges are dealt with including how they allocate and distribute them.
- how the employer ensures transparency

If the employer is not required to have a policy but would be required if worker received tips were paid, the employer must make the following information available to its workers:

- that the employer is not required to have a written policy for the place of business, and the reasons why the employer is not required to have such a written policy.

What is a fair allocation.

It does not necessarily require the employer to allocate the same proportion of tips to all workers.

There should be a clear and objective set of factors to determine the allocation and distribution

Suggestions given in the code of practice are

- type of role/work
- basic pay
- individual and team performance
- seniority level of responsibility
- length of time with the employer.
- customer intention.

The employer must avoid any form of unlawful discrimination – we would in particular urge care with length of time as a factor for allocation as that can potentially discriminate against younger workers who have not had the opportunity to accrue long service, even though the Code of Practice suggests it as a factor.

The employer should

- consult with workers to seek broad agreement in the workplace on the system of allocation
- ensure that it is fair, reasonable and clear, and
- the factors considered by the employer must be stated in the tipping policy shared with the workers.

This should be reviewed on a regular basis.

Methods of allocation and distribution

The employer may receive and then pay the workers who share the tips in the payroll or the employer could set up a Tronc arrangement which could include appointing a member of staff to be responsible for allocating and distributing tips, or appointing an external independent operator such as payroll or accountant. We anticipate that trainers will not look to set up a Tronc arrangement but if considering that then please ring the NTF office for further information.

Time of payment of tips

The Tipping Act states that employers must ensure that all tips are distributed to staff at the latest by the end of the month, following the month in which the tips are paid by the customers.

For example, a customer leaves a tip on the 23rd of June it must be distributed by the 31st July at the latest.

Record Keeping

The employer needs to have clear record keeping on tips.

A tipping record must include details of all qualifying tips received by the employer at the place of business and the amount allocated to each worker.

This record must be maintained for a period of three years beginning with the date on which the tip was paid.

A worker has the right to make a written request limited to one request per worker in a three month period to view the tipping record of the employer for a period dating up to 3 years previously provided they worked for the employer for the full period.

Grievances

The employer should have a procedure in place for resolving issues – that would generally be through the existing grievance procedure.

Wages

A reminder that tips do not form part of basic pay and cannot be counted towards the minimum wage

Worker's Right to bring a claim

A claim relating to the allocation of tips can be brought by a worker up to 12 months after the alleged failure to comply took place so much longer than the normal 3 month period for a tribunal claim.

The tribunal will have various powers including the ability to order employers to revise the allocation of tips or make a payment to one or more workers.