

Update to the Employment (Allocation of Tips) Act 2023

The Employment (Allocation of Tips) Act 2023 (the Act) is intended to prevent employers from withholding any amount of tips payable to employees and to ensure 100% of the tips and service charge are passed on to the employees.

The Secretary of State for the Department of Business and Trade issued a 'Code of Practice' on 15 December 2023 to promote fairness and transparency which is intended to complement the Act.

It is the Government's intention that the Act will apply from 1 July 2024.

A summary of the main points that arise from the new legislation are as follows:

1. All tips must be passed on to employees in a fair and transparent manner

The employer must ensure that all employees are aware of their eligibility to receive tips, including the basis upon which it is allocated. Equally, the employer is required to make employees aware that the funds are made up of discretionary payments 'left' by customers and do not form part of their contractual earnings. Only limited deductions are possible, such as the Income Tax due on the amounts paid to employees.

2. All tips must be allocated/distributed by the end of the month, following the month they were collected

A requirement of the Act is to ensure there is no delay in funds being distributed, or that no funds are being retained to pay employees whilst they are not working.

Tips can also include card or alternative electronic payments (app or QR codes) as well as non-monetary tips, such as a voucher, stamp, token, or other item with a fixed value which can be expressed in monetary terms or exchanged for goods or services.

Employers should take steps to ensure there are no delays in the payment of tips.

3. The business will not be permitted to retain any amounts from the tips collected, even if it is intended to meet costs such as credit card charges or payroll costs

Under the Act, all gratuities and service charges left by customers must be passed on to employees (including agency workers). Employers will need to bear the costs for administering the tronc scheme, including credit card charges, payroll fees and the costs relating to any tronc related disputes.

4. A full set of tronc scheme rules, including details of how tips are to be allocated, must be shared with all employees

Employers will need to ensure clear and fully accessible written tronc scheme rules are made available to all employees (including agency workers).

5. Place of work

Under the Act, the employer must ensure that the amount of all qualifying tips is paid fairly as they relate to the place of business. Tips can be shared with service staff and employees who work in a 'non-public place of business'.

6. Employers will have an obligation to provide a record of the tips received by any employee over a rolling three-year period

Where tips are paid to employees via the main payroll, this can continue with details of the amounts distributed clearly recorded on each employees' payslip. The Act is not seeking to change how the tips payroll is operated, but it will be necessary to create a report detailing the tips distributions paid each month which should be made available to employees.

7. Agency workers will be entitled to receive tips in the same way as employees

The inclusion of agency workers within the Act will potentially increase those who are entitled to receive a share of the tips. This therefore reinforces the need to update the existing tronc scheme arrangements, and how the funds are going to be allocated.

However, the Act does not apply to self-employed people.

8. How tips should be allocated

The Act does not require employers to allocate the same proportion of tips to all workers. The scheme rules adopted by the employer should define who the tips should be allocated to, for example:

- *The type of roles undertaken by front and back of house staff (typically the points system many employers currently have in place)*
- *By reference to basic pay*
- *Individual/team performance*
- *Seniority and level of experience*
- *Length of service*
- *Customer intention*

Employers must avoid unlawful discrimination when selecting and applying their own criteria. However, there is a requirement to consult with workers to seek a broad agreement of the system to allocate the tips collected.

9. Employees who receive tips will have a right to take any disputes to the Employment Tribunal

The troncmaster will need reassurance that the company will deal with any complex disputes. However, there may be a requirement to engage in formal collective consultation where a tipping system affects the terms and conditions around pay.

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