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The Employment (Allocation of Tips) Act 2023 for hotels and restaurants

The Employment (Allocation of Tips) Act 2023 (the "**Act**") came into force on 1 October 2024.

The Code of Practice published by the government on 29 July 2024 (the "**Code of Practice**") states that the Act aims to "*increase fairness in tipping practices*" and "*create a level playing field*" for employers who already allocate all tips to workers by ensuring that employers follow the same rules.

Tipping is common practice in the hospitality industry. It is therefore important for employers operating in this industry to be aware of their obligations under the Act, as non-compliance can lead to employers facing enforcement action in the Employment Tribunal.

This bulletin provides an overview of how the Act may impact your business, and details some practical steps that you can consider to comply with your obligations.

What is the Act?

The Act, which applies in England, Scotland and Wales, regulates how employers allocate tips to workers by introducing obligations to ensure that workers receive "tips, gratuities and service charges" ("**Tips**") in full.

Employers are required to:

- Pass on all Tips to workers without deduction (except in limited scenarios, such as deducting income tax).
- Ensure that Tips are allocated in a "*fair and transparent*" way when the employer takes control or exerts influence over their distribution.
- Have regard to the Code of Practice in the fairness and transparency of Tip distribution.

The Secretary of State has issued the Code of Practice to promote fairness and transparency in relation to the distribution of Tips.

When does the Act apply?

It applies to "qualifying Tips" which are employer-received Tips or certain worker received Tips. The Code of Practice states that the determining factor in whether a Tip is qualifying is whether the employer receives (for employer-received Tips) or exercises control or significant influence over the distribution of worker-received Tips.

Tip-collecting practices falling under the Act include:

- First receiving the money and allocating it to workers after (including at the end of a shift).
- Telling staff how to distribute cash tips.
- Collecting cash tips and distributing them at the end of a shift, or as part of the regular payroll.

The Act applies to all workers and eligible agency workers.

Tips must be distributed between workers at the place of business they are received, and employers cannot pool Tips received across multiple sites or branches.

What are our obligations and how will the Act impact our business?

As an employer in an industry where tipping is commonplace, you should ensure that the total amount of the qualifying Tips paid are allocated fairly between workers at your place of business.

Employers are required to have a written tipping policy when qualifying Tips are paid at, or are otherwise attributable to, a place of business on more than an occasional or exceptional basis. You should make your workers aware of this policy, to ensure you are complying with the transparency requirement.

Employers must ensure that all Tips are distributed to staff at the end of the month (at the latest) following the month in which the Tips are paid by customers.

What practical steps should we consider now to ensure compliance with the Act?

The Code of Practice provides helpful guidance on practical steps that you can consider to ensure your business is in compliance with the requirements of fairness and transparency under the Act. In overview, as an employer you can:

- Maintain a clear written policy documenting how Tips are dealt with in your business, and ensure this is available to all workers. Ensure the factors considered in the allocation of Tips are stated in the tipping policy, and include how Tips are accepted, how Tips are allocated and distributed, and the steps you take to ensure Tips are handled fairly and transparently. You should also ensure that this is available in an accessible format, and that agency workers have a copy of the policy.
- Keep a clear record of all Tips paid and their allocation and distribution between each worker, to which workers have the right to request access (the record must be maintained for three years beginning on the date the Tip was paid). A tipping record could include details of all qualifying Tips received by the employer at the place of business and the amount allocated to each worker.
- Account for agency workers when distributing Tips.
- Use a clear and objective set of factors to determine the allocation and distribution of Tips. The choice of factors should be fair and reasonable in the circumstances and the nature of your business (including type of role, basic pay, hours worked, performance, seniority, length of service and customer intention). Ensure that these factors avoid any form of unlawful discrimination, including indirect discrimination.
- Consult with workers to seek broad agreement on the fairness and reasonableness of the Tip allocation system (and consider whether there are legal or contractual requirements to engage in formal collective consultation where a tipping system

affects terms and conditions around pay that are covered by a collective agreement with a recognised trade union). You should also consult staff on any updates to the policy.

- Conduct reviews to ensure that tronc operators are allocating and distributing Tips fairly, including independent tronc operators. Failure to address unfair practices could result in non-compliance with the Act.
- Proactively conduct regular reviews to the Tip allocation approach. Staff turnover may lead to a policy becoming unlawful and discriminatory.
- Have a fair process in place for resolving issues and responding to queries from workers who have not received the share of Tips they expected.
- Review the [Code of Practice](#) and the [non-statutory guidance for employers](#) published on 27 September 2024, which sets out suggestions on applying fairness and transparency to policies, and can be assessed against your tipping practices.

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