



New Government, More Changes – Tips & Service Charges Update

HOSPA

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The current position for hospitality businesses

- The Employment (Allocation of Tips) Act 2023 and accompanying statutory Code of Practice came into effect on 1st October 2024
- The new legislation requires all businesses to distribute 100% of monies to staff by end of the following month and to have a Written Policy available to all
- Agency workers must now be considered but the rules are both complex and vague with no single or simple answer
- Government released further “non statutory” guidance just 4 days before new rules took effect
- This guidance went significantly beyond what is in the legislation and Code of Practice....a sign of things to come?

Agency workers

- Must be “considered” and if no award/a lesser award is to be made then agency workers need to be advised why
- Rate of basic pay and level of skill/experience are relevant factors as well as higher level of supervision, training and management that an agency worker might require
- Cannot have a rule that discriminates against agency workers or is designed (in reality) to only affect agency workers
- “Qualifying period” rules must be applied to directly employed staff too
- This may negatively impact earnings for directly employed staff as more tips/service charges are paid to agency workers. **This is a direct and intentional consequence of the legislation**
- If an agency worker feels their rights have been breached then their right of redress can be against the operator **and** the agency – Regulation 27K subsection (1) and (2)

Worker rights to information

- Businesses have obligations to maintain certain records under the new legislation and workers have the right to request some of those records (Regulation 27J). Workers can ask for:
 - Total amount generated at the site at which they work
 - Details showing all monies paid to workers within required timeline
 - How much allocated to workers by a business and how much by an independent Troncmaster
 - How much of the funds generated were “attributable to” the place of business (meaning they can establish amounts paid to staff in “non public places of business”)
- Requests must be in writing and be for a minimum period of one month. Requests cannot cover a period prior to 1st October 2024
- Workers have **no rights** to details of amounts paid to other workers, departments, grades or positions or similar; only to details of their own personal award

The new Government's Employment Right Bill

- A key part of Labour's pre-election manifesto published on 11th October
- Introduces changes to the Employment (Allocation of Tips) Act which will take effect no later than **1st April 2026**
- There must now be formal consultations for all new Written Policies, and existing Written Policies must be reviewed at least once every 3 years. These consultations must involve workers and any recognised trade union
- An employer “must make a summary of the views expressed in the consultation available in an anonymised form to all workers”
- **So what is the new Government up to?**

The new Government's direction of travel

- Labour's position is not just that workers should receive all tips and service charges, but should also control how those tips and service charges are managed and allocated
- The aim of the amended legislation is that “**workers are actively involved**” in the development of tipping policies and there must be “**genuine consideration of staff input**”. Employers will need to “encourage” input
- The Government believe that, on average, 60% of a business's employees will be involved in any consultation
- The Government believe this will lead to “fairer” tip allocations, which suggests they feel that the current legal framework does not deliver sufficiently “fair” allocations
- The cost to business of these changes is estimated as being £59m and as high as £233m
- But what else are the new Government seeking to achieve?

What does the Government want to see?

“The policy is not expected to impact the overall value of tips transferred from employers to workers but **could affect the distribution of tips among staff** within an organisation.

This could **particularly benefit workers in scope of the policy who have less voice in the workplace**...these workers could experience an increase in their incomes due to receiving a higher share of tips. **Other groups of workers could lose out** from tips that they would otherwise receive....**this policy could therefore lead to positive distributional effects”**

The Government are specifically trying to achieve a “**redistributive**” impact!

Strategy for operators and Troncmasters

- Stick to the principles of the legislation and Code of Practice as they currently stand. **In particular don't be tempted to remove non-guest facing or non-public place of business workers from tips** as this will **increase** the prospects of an Employment Tribunal claim
- Review the levels of awards to senior staff and non-public place of business staff to ensure they are reasonable and not disproportionate. A modest increase in your house pay costs for these team members may be better than running the risks of your whole arrangements being challenged by your team
- Provide your team with the information they are entitled to pro-actively to show you are embracing transparency
- Engage with your team and give them a means to ask questions (even if some of them can't be answered) and show you are listening even though you can't take everyone's view into account
- **A happy and engaged team are less likely to challenge, ask questions, challenge or demand control**



Questions?

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