Institute of Hospitality

ABOVE & BEYOND

WHITE PAPER

TIPS, TRONC AND GRATUITIES: HOW TO NAVIGATE THE NEW LEGISLATION

in association with

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BRIGHTER THINKING

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CONTENT:

The background

As of 1 October 2024, the Employment (Allocation of Tips) Act and the statutory Code of Practice on fair and transparent distribution of tips came into force, requiring employers in England, Scotland and Wales to pass all tips, gratuities and service charges on to workers without deductions. Employers breaking the law and retaining tips risk workers bringing a claim to an employment tribunal, which may award up to £5,000 in compensation per worker.

The aim of the Tipping Act is fairness, ensuring that tips guests leave in recognition of good service and hard work are going to workers as intended.

The Tipping Act amends the Employment Rights Act 1996, with employers now required to:

- Pass on all tips and service charges to workers without deductions, except in very limited scenarios, such as deduction of income tax.
- Ensure that tips are distributed in a fair and transparent manner when the employer takes control, or exerts significant influence, over their distribution.
- Follow the Code of Practice's guidance on fairness and transparency of tip distribution.
- Maintain a written policy on how tips are dealt with and make this available to all their workers.
- Maintain a record of all tips paid and their allocation and distribution between each worker, to which workers have the right to request access.

The challenge

Businesses and team members need to understand how to appropriately accept and declare tips, and ensure agency workers receive a fair allocation, in a way that is compliant with the new legislation.

Businesses found to not be adhering to the new legislation not only risk reputational damage, but also leave themselves open to employment tribunal claims and possibly even claims of discrimination. For example, an organisation is obliged to ensure agency workers are not discriminated against, including in the way they're paid, simply because they are employed by an agency.

Customers have become increasingly suspicious about whether their tips reach the team members they intended them for. As a result, they are asking more questions about tip systems, which team members need to be able to answer with confidence.

However, like any new legislation, there remain some areas that are not fully covered by the new Code of Practice and changes may yet be introduced. Businesses will have to contend with this potentially changing landscape and keep up to date with any new requirements, ensuring they are as compliant as possible at all times.

This all takes place amidst the background of a cost-of-living crisis, which may affect team members. Businesses may have noticed a reduction in tipping levels, which will affect team members' overall income.

Tips, Tronc and Gratuities: How to navigate the new legislation

We've got to be completely transparent, and it's all got to go to the staff.

Kan Koo FIH, director, Cosmo Restaurant Group

The Tipping Act covers "qualifying tips, gratuities and service charges", meaning employer-received tips or worker-received tips that are subject to the employer's control. For example, if an employer tells staff how to distribute cash tips or if they collect cash tips and distribute them at the end of a shift or as part of the regular payroll, or if the employer received a tip paid by card, through an app or by scanning a QR code.

Non-monetary tips can also count as 'qualifying tips' if they are received, controlled or significantly influenced by the employer. For example, a voucher, stamp, token or similar item that has a fixed value which can be exchanged for money, goods or services, such as a casino chip.

Not all tips fall under the scope of the Tipping Act. If a worker receives and keeps a cash tip, with no employer control or involvement, the tip is out of scope for the Tipping Act and Code, or if a customer uses an app to directly tip members of staff, bypassing the employer.

Fairness

Allocating and distributing tips fairly does not necessarily require employers to allocate all workers the same proportion of tips. However, there should be a clear and objective set of factors to determine the allocation and distribution of tips. This can include role or work, basic pay, hours, performance, seniority or responsibility, or length of service – although the latter must not result in discrimination against younger employees. Employers should consult with workers to agree on an allocation of tips that is fair, reasonable and clear.

Employers must take extra care to avoid indirect discrimination, which may be a risk when fewer tips are allocated to a group of workers that may include a disproportionate number of people with a protected characteristic. Agency workers and staff on zero-hour contracts are also required to receive a fair share of tips.

To tronc or not to tronc?

> Overall the responsibility still lies with the employer to make sure that it is fair, transparent, and that they are actually dealing with any issues that occur… although you can have a tronc scheme and outsource it, it is important to know that it lies with you and you are the one as an employer that has to sort things out.
>
> **Vandana Dass MIH, managing director/senior solicitor, Davenport Solicitors**

An employer may receive tips directly and pay workers their share as part of the next payroll cycle. However, they may opt to use a tronc system. A tronc operator may be an external payroll or accountancy firm, or a member of staff elected by workers. If employers have a reasonable belief that the tronc is operating independently and fairly, the employer will be regarded as compliant. However, if the employer becomes aware of any unfairness or improper distribution, they are obliged to address this.

Tips are taxable income for the employee, and unless there is a qualifying tronc system in place, employer's National Insurance will apply to tips (1). However, other than statutory deductions such as income tax, the "total amount" of qualifying tips paid by customers must be passed on to the workforce. For example, the employer cannot make deductions from tips to cover the cost of engaging a third-party provider to run a tronc scheme (2).

Distribution

The Tipping Act states that employers must ensure that all tips are distributed to staff by the end of the month following the month in which the tips were paid by customers, at the latest. Tips must also be distributed between workers at the place of business where the tips are received, meaning tips cannot be pooled across multiple sites or different branches.

Each worker has the right to make one written request every three months to view their employer's tipping records over the last three years, if they were employed for the full three-year period.

Best practice

> You have to keep informing your staff about what you're doing.
>
> **Rizwan Khan MIH, general manager, Junsei Marylebone, London**

Employers need to communicate any changes about the way in which their tipping system operates to staff, especially if some team members may see less at the end of each month as a result.

Some businesses are exploring initiatives to reduce the impact this may have on team members, for example introducing service charge on rooms revenue. This can also broaden inclusion to team members who don't normally receive tips, such as housekeepers and front office staff.

Venues may wish to consider displaying their tips policy front-of-house to provide full transparency to customers, although this is not required.

Solutions

Be transparent

Ensure staff are not only informed of your tipping system when they join the business, but are continually updated, especially in light of the recent legislation and any subsequent changes the business may have to or choose to make. Employers should ensure a written tipping policy is available to staff which covers how tips are accepted, allocated and distributed, and what steps they take to ensure tips are handled and distributed fairly and transparently in accordance with the Tipping Act.

This policy can be made available physically or digitally, for example on a staff portal, or emailed to team members directly. Employers must provide this policy in an accessible format on request for any worker with a disability. Consulting staff on updates to the policy is one way to ensure staff view it as fair and provide transparency. All staff, however they are recruited and engaged, should be equally aware of any changes to the policy from the day they take effect.

Agency workers and zero-hours staff

> We rely on the agency to fairly distribute to their own employees, and we've asked them to sign a document to say that they hold themselves accountable, and should an audit take place, they will be able to provide information to that effect to show that they're distributing their tronc.
>
> **Jakob Gowin FIH, general manager, Meliá White House, London**

Hospitality businesses need to do their due diligence when it comes to ensuring agency workers and zero-hours staff receive a fair allocation of tips, even if this is not under their full control. While a venue may have completed its obligation by passing on what is owed to an agency, it is still the employer's duty to ensure as far as possible that the workers received their fair share. Venues may wish to have their agency partners commit in writing to abide by the new legislation, uphold their tronc policies, and take responsibility for ensuring fair distribution of tips to workers.

Keep and maintain clear records

A tipping record must include detail of all qualifying tips received by the employer and the amount allocated to each worker. This record must be maintained for three years from the date on which the tip was paid. Tipping policy and record templates are available via the government's non-statutory guidance for employers.

Mediation

Should any issues arise, employers and employees are encouraged to seek a resolution without external involvement if possible. However, Acas can support with mediation. Employers need to ensure they give equal weight to queries from agency workers as those from employed staff, and may wish to consider implementing an internal complaints procedure.

Next steps

1) Read and understand the new legislation and be up to date with any changes.

2) Assess how your current tipping system operates, ensuring it is compliant, and whether your business best suits an in-house distribution system or outsourcing to a third party.

3) Re-draft tips policies if any changes are required and make this information freely available to staff.

4) Ensure records are clear and maintained for the correct period of time.

5) Do your due diligence when it comes to agency worker tips distribution.

6) Keep staff informed through regular communication, ensuring they have the opportunity to ask questions and consult on any changes.

7) Consider displaying the tips policy within your venue.

8) Think about implementing an internal complaints procedure.

Methodology

This white paper has been produced following an 'Above & Beyond' panel discussion at COMO The Halkin, London, on 25 November 2024.

Panel

Chaired by
Martin Traynor OBE FIH, chair,
Institute of Hospitality

Vandana Dass MIH, managing director/senior solicitor,
Davenport Solicitors

Jakob Gowin FIH, general manager,
Meliá White House, London

Rizwan Khan MIH, general manager,
Junsei Marylebone, London

Kan Koo FIH, director,
Cosmo Restaurant Group

Resources

Department for Business & Trade: Code of Practice on Fair and Transparent Distribution on Tips (2024)
Department for Business & Trade: Non-Statutory Guidance: Distributing tips fairly: non-statutory guidance for employers (2024)
Restaurant Online: The new Tips Bill explained (2024)
The Caterer: How to share tips fairly and transparently (2024)
Acas

References

(1) Menzies: The Tipping Act – planning and technology are the key to being ready (2024)

(2) Davenport Solicitors: New allocation of tips rules: What the hospitality, leisure and services sectors need to know (2024)