



The Employment (Allocation of Tips) Act 2023

The purpose of the Employment (Allocation of Tips) Act 2023, which will come into force on 1st October 2024, hereafter referred to as the Tipping Act, is to create a legal obligation on employers across sectors to allocate all tips, gratuities and service charges which they are paid or which they exercise control or significant influence over ("qualifying tips") to workers without any deductions.

The Act requires employers to ensure that the distribution of qualifying tips between workers is fair.

IMPORTANT

Advo One provides guidance in relation to this new legislation. However, until legislation comes into force, it is subject to change. This guidance also relates to the draft code of practice on fair and transparent distribution of tips. This draft code of practice is also subject to change and amendments. It is likely that confirmed code of practice on fair and transparent distribution of tips will be published in early October 2024. Advo One will inform you if there are any significant additions or amendments

- **Defining a tip which falls under the Act**

The method of payment (for example whether it is made by card, in cash or via an alternative method) does not determine whether a tip is a qualifying tip for the purposes of the Tipping Act and this Code.

Broadly speaking, the determining factor in whether a tip is qualifying or not is whether the employer receives (in the case of employer-received tips) or exercises control or significant influence over (in the case of worker-received tips) the distribution of tips. This is most commonly demonstrated when employers first receive the money and then allocate it to workers.

An employer is likely to have exercised control or significant influence over cash tips if they tell 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.

However, 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 this Code.

Note

If your business operates a system whereby all cash tips are pooled, e.g. at the end of the shift and divided amongst the staff, this would come under the Tipping Act.

- **Which workers are covered by the Act?**

All workers are covered by the Act. This means all full and part-time employees, zero-hour contract employees, casual workers and agency workers must be included in the fair distribution of tips.

- **How to allocate tips**

Allocating and distributing tips fairly does not necessarily require employers to allocate the same proportion of tips to all workers. There may be legitimate reasons why employers choose to allocate different workers different proportions of tips.

However, employers should 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 given the circumstances and the nature of the individual business.

Listed below are some of the factors which may be considered by employers, though this list is illustrative rather than exhaustive:

- type of role or work for example distribution between front of house and back of house workers
- basic pay (and how workers are engaged)
- individual and/or team performance
- seniority or level of responsibility
- length of time served with the employer

Employers must avoid any form of unlawful discrimination when selecting and applying the factors for allocating and distributing tips. Employers must take extra care to avoid indirect or unintentional discrimination, which may be a risk when fewer tips are allocated to a group of workers which includes a disproportionate number of workers with a particular protected characteristic.

Note

Multi-Venue operations and head offices: Tips collected at a particular venue must be distributed among the staff at that venue exclusively, without spreading across multiple locations.

However, head office personnel may receive tips from specific venues if their job roles are directly linked to those venues, such as Area Managers or Sales Executives.

- **Consultation**

Whilst not stated as a directive, the Code of Practice states that employers should consult with workers to seek broad agreement in the workplace that the system of allocation of tips is fair, reasonable and clear, and the factors considered by employers must be stated in the tipping policy shared with workers.

Advo would therefore recommend that employers elect representatives from different areas of the business to meet and discuss the proposed allocation of tips and seek agreement. A record should be kept of such agreement and reviewed annually.

- **Policy and Records**

An important aspect of the Tipping Act is that employers must have a written tipping policy and must outline how the employer ensures “fair” distribution. This policy must be written in clear, understandable language and must include how tips are accepted, how tips are allocated and distributed, and what steps the employer takes to ensure tips are handled fairly and transparently. Employers must provide an accessible format for any worker with a disability, on request.

An employer cannot be said to have met its obligation to handle tips fairly and transparently if individual workers are not aware of their entitlements in line with the tipping policy. This ensures workers can effectively challenge either the employer’s tipping policy itself or its implementation, if they consider it to be unfair.

However, employers are free to decide how to disseminate the written policy to their staff. They can choose to provide it in either electronic form or as a physical written document. If employers want to

provide the policy electronically, they may email it directly to workers, upload it to a relevant portal or provide it to all workers in another suitable manner.

However, in order to provide a safeguard, Advo One would strongly recommend that a paper trail is kept, and workers are asked to sign that they have received a copy of the policy.

Where agency workers are engaged, employers can provide those workers with a copy of the tipping policy themselves (electronically, or as a physical copy at the start of their engagement) or request that the agency share the policy with the worker on their behalf.

An employer may share their written tipping policy with customers or display it publicly if they wish, but this is not a requirement of the Tipping Act.

- **Payment and Records of tip allocations**

Employers must ensure that all tips are distributed to workers, at the latest, by the end of the month following the month in which the tips are paid by customers (section 27G). For example, if a customer leaves a tip on 23 June, it must be distributed by 31 July at the latest.

Records of tip allocations must be retained for three years beginning with the date on which the tip was paid.

A tipping record must include detail of all qualifying tips received by the employer at the place of business, and the amount allocated to each worker. The tipping records must be stored, processed and disposed of in line with data protection legislation, as defined in the Data Protection Act 2018

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 their employer for a period dating back up to three years, provided they worked for the employer for the full duration of the requested period.

Workers may request their personal tip statements as well as those for the venue, provided they contain no other workers personal data. An employer must provide their tipping record, including the total amount of qualifying tips received by the employer during the relevant period at the relevant place of business, and the amount allocated to the worker making the request.

What kind of scheme would you need?

There are several options that businesses can consider, depending on what works best for them and the right solution. The most common options include:

- **In-house tronc scheme:** Several businesses choose someone to manage the tronc scheme internally and appoint someone or several people to manage the distribution of tips to staff. However, please be aware that the new legislation states that businesses will be responsible for non-compliance, not Troncmasters.
- **Third-party tronc scheme:** This is when the business hires an external provider to manage the system on its behalf. There are many advantages in terms of time and ensuring that legislation is followed. However, depending on the business size, it can be expensive.
- **Hybrid tronc scheme:** This is a combination of both an in-house scheme and a third-party scheme. For operators who have a robust rota or payroll system in place that helps them manage and distribute tips, they may just want the expertise of an external Troncmaster to ensure everything is managed fairly and in line with legal obligations and requirements.

No matter which method businesses use, it's important to ensure the tronc scheme is fair and transparent in how tips are collected and distributed.

Please note that it will become unlawful to alter an employee's regular wage (hourly rate or salary) in return for a share of tips. Moreover, any guaranteed tips' value cannot count towards meeting National Minimum Wage requirements.

What consequences will be faced by those who break the new rules?

Those who break the rules may find themselves facing employment tribunals and prosecution. Under the new regulations, tribunals will have the authority to award workers up to £5,000 in compensation to cover any financial losses incurred due to their employers' failure to pay them their tips incorrectly or at all.

- Important

It is understood that a worker will have up to 12 months from the date of the employer's non-compliance with the act to lodge a claim in the Employment Tribunal, which is far longer than the usual three-month period for most employment-related claims.