

The Government Approves Law to Protect Employees Tips and Give Customers Transparency

October 2021

On Wednesday 27th October 2021 Leo Varadkar received Government approval to draft a law that will give new rights to employees, prohibiting the use of tips and gratuities to 'make up' contractual rates of pay. (This proposal had been commenced in 2019 but had fallen following the general election of February 2020.)

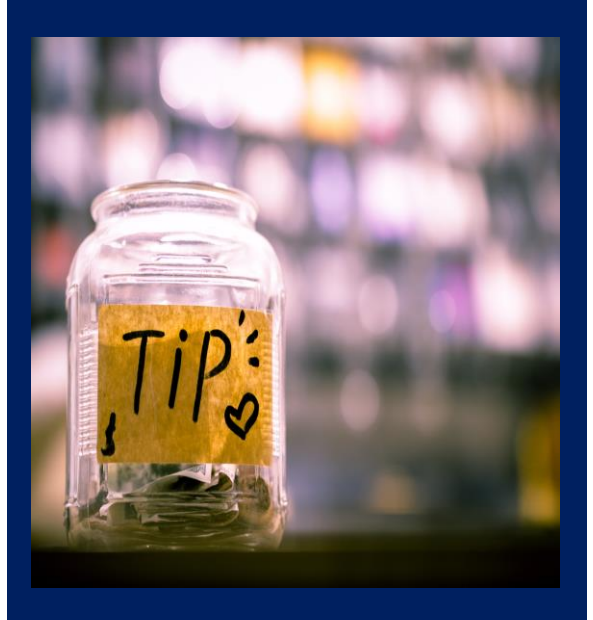
This is of huge interest to our clients who work in the hospitality industry. But also from a consumer perspective, it is a question many diners like to know when considering tipping their servers.

"I know many people are sometimes unsure how or if tips and service charges are distributed when paying for a meal, for example, especially when paying by card or phone. Once this law is enacted, all employers will be required to show clearly how tips and service charges are dealt with in a business. This will provide clarity for both customers and staff."

Leo Varadkar TD

This new law will, for the first time, give workers legal protections and entitlement to receive tips and gratuities paid in electronic form (i.e. by debit or credit card) with a provision that these tips and gratuities should be paid out to workers in a fair, transparent and equitable manner.

It will mean that any tips received cannot be counted towards an employee's basic pay, they must be counted as additional and separate. A fair and equitable distribution will be context specific and is likely to take into account matters such as staff hours, busy and quiet periods, a worker's role in service delivery, customs and practice etc.



Most establishments already treat their employees fairly with regard to tips, so for many it will mean no change other than having to display their policy clearly.

Payment of tips and gratuities by electronic means, in contrast to cash tips that are paid directly to the worker, means that the employer is in control of how these tips and gratuities are distributed. The electronic record generated by this payment method will support and facilitate inspections by the Workplace Relations Commission (WRC) in the event of a complaint being made. How cash tips are distributed will be required to be included in an employer's publicly displayed policy on the management of tips and gratuities.

The aim of the Payment of Wages (Amendment) (Tips and Gratuities) Bill is to:

Provide clarity on the meaning of tips, gratuities and service charges;

- Place tips and gratuities, but not service charges, outside the scope of a person's contractual wages;
- Oblige employers to display prominently their policy on the distribution of both cash and card tips;
- Oblige employers to distribute fairly, equitably and in a transparent manner, tips that are received in electronic form i.e. through debit or credit cards or smart phones;



This new law builds on the suite of legal rights that the Government is introducing to protect workers, which includes the Sick Leave Bill, the Transparent and Predictable Working Conditions Directive and the right to request remote work.

If you have any questions, please don't hesitate to give us a call and we would be very happy to discuss any questions you have.

Regards

Kieran Horgan