

Tip top tips

October 2022

Hospitality and other service sector companies need to gear up for changes to gratuity. New legislation will make it unlawful for businesses to hold back services charges.

The legislation, drawing on recommendations from the Government's [Good Work Plan](#) proposals, will make it unlawful for employers to withhold tips and service charges from staff. It also gives workers new rights to see more information about an employer's gratuity record. The new rules will come into force after winning backing from MPs. In addition, plans are afoot to develop a new statutory Code of Practice to advise businesses and staff on the correct way to distribute tips.

Initially, the intention had been for a more expansive employment bill to incorporate these changes. However, that bill was subject to ongoing delays. As a result, MP Dean Russell proposed a private members' bill to address the issue.

The new rules aim to overcome situations where employers make deductions from tips or withhold service charges from staff when paid by card by levying 'administration' charges.

"Employers in the hospitality sector need to be mindful of these changes and have practices ready to put in place to comply with the new legislation," said employment partner Karen Cole.

Historically there has been no control over managing tips in the workplace, only a voluntary code of practice which encourages employers to be transparent.

Previously, the only restriction on employers was that tips could not count towards the national minimum wage (NMW). The NMW Regulations apply to any eligible worker, whether paid by the hour or on some other basis.

Employers must make calculations to check whether the equivalent hourly rate is at the right amount, and any gratuities paid must be on top of the NMW.

Some restaurants may have what is known as a tronc scheme. A tronc scheme is effectively a self-administered scheme for staff, with a tronc master appointed to distribute tips between staff. The employer cannot influence the scheme's operation or how tips are shared.

Employment partner Karen Cole added: "*While this legislation may be controversial to some employers, this is now the final call to ensure staff receive their total share of tips. Cashless transactions have been a barrier to workers who want to track their tips. The new legislation will help tackle that issue with greater transparency in future.*"

Employers need to consider how they handle tips when customers pay via card. In the past, many businesses have made a deduction for the related transaction fees applied on card payments before passing the cash on to workers, but this will no longer be permitted. In future, employers must pay the total amount to employees."

Check your gratuity procedures are in tip top shape by contacting [Karen Cole](#) today.

Karen Cole
020 7299 6909
karen.cole@riaabg.com
www.riabarkergillette.com



Note: This article is not legal advice; it provides information of general interest about current legal issues.

