

Ensuring your gratuity does what it says on the (tip) tin

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Amending the Payment of Wages Act

In recent weeks, the Cabinet approved draft Heads of Bill which would amend the Payment of Wages Act (the **Proposed Legislation**). Per a recent press release announcing the approval by Cabinet of the Proposed Legislation from the Department of Employment Affairs and Social Protection:

"The Heads of Bill set out how the Minister intends:

- To amend the Payment of Wages Act to ensure that tips and gratuities cannot be used to 'make-up' or satisfy a person's contractual wages; and
- To provide for a requirement on employers to clearly display, for the benefit of workers and customers, their policy on how tips, gratuities and service charges are distributed."

Speaking recently, Minister Doherty stated that,

"It has become clear over the past number of months that in a minority of establishments, workers are not being treated fairly with regard to tips."

Does the proposed legislation ensure fairness?

The first obvious point is that the legislation will not guarantee that the tip you leave, or any minimum percentage of it, will go directly to your server.

What the Proposed Legislation does do however, is seek to guarantee transparency. Business owners will be obliged to display how tips are treated, dispensing with the need for awkward conversations with your server, or requesting cash back for the tip. In recent times, servers in well known Dublin restaurant have been precluded from taking payments from customers, after

management alleged that servers were asking customers for any tips to be left in cash.

The other aspect of the Proposed Legislation works to restricts the practice whereby an employer offers an employee an hourly rate, for example €11, but is only responsible for paying the employee the minimum wage of €9.55. The short fall is then generally made up from pooled tips, gratuities and service charges, or the “Tronc”.

As proposed, Employers will be precluded from including tips or gratuities from the Tronc. Notably, Service Charges, per the press release, are not precluded from being used in this way. Customers will however be aware how the Service Charge is treated.

Enforcement

It remains to be seen how the Proposed Legislation will be enforced. Currently under the Payment of Wages Act (as Amended), breaches are either defined as an Offence (for which the Employer or its Officers can be held liable) or, workers can bring a claim for redress to the Workplace Relations Commission.

It will be interesting to see how the Proposed Legislation ensures compliance with the procedures the business owners are obliged to advertise. A complaint of recent striking employees in Dublin was that when they did receive a portion of pooled tips, there was no transparency as to how the figure was calculated.

If you require further information on this topic, please contact Bláthnaid at blathnaid.evans@ogier.com

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