



## **Green Party - *An Comhaontas Glas* Submission**

### **Low-Pay Commission Public Consultation on Tipping Practices**

#### **Introduction**

This document is the Green Party - *An Comhaontas Glas* submission to the Low-Pay Commission in relation to the issue of vulnerable workers not receiving the tips that they are entitled to. This submission further highlights some of the issues relating to the broader context surrounding the issue of tips and the characteristics of what constitutes a 'vulnerable' workforce. This submission is written by Green Party Rathgar-Rathmines Councillor Patrick Costello and Cork South-Central Green Party representative Lorna Bogue.

#### **Reality of work conditions in sector with high levels of tips**

A recent report from ICTU<sup>1</sup> showed that workers who were most likely to have insecure precarious work where they could not rely on guaranteed hours were in the food, hospitality and service

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<sup>1</sup> Irish Congress of Trade Unions (ICTU) (2017), *Insecure and Uncertain': Precarious Work in the Republic of Ireland & Northern Ireland*

sectors (ICTU, 2017). This is a finding which replicates growing trends, particularly in the US, where the lowest paid workers are proportionally working in sectors such as retail, hospitality and agriculture.

With regard to an Irish breakdown of low paid employment on a sectoral level, the latest information from the CSO suggests that this is a trend that we are seeing in Ireland. As illustrated in the following table<sup>2</sup>, 75% of employees in the accommodation and food services sector were earning less than €400 per week in 2014. It is worth noting that this figure falls well below the median wage in 2014 of €528 per week and that the employees in this sector are disproportionately earning lower wages than any other sector. In fact, in academic literature, the methodology that is sometimes used for defining 'vulnerability' is that a worker is earning two thirds of the median wage. It is reasonable therefore to assume that using this methodology, only 24% of workers in this sector are not nominally at risk of vulnerability<sup>3</sup>.

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<sup>2</sup> CSO Data Source:

<https://www.cso.ie/en/releasesandpublications/er/eaads/earningsanalysisusingadministrativedatasources2011-2014/>

<sup>3</sup> Weil, D. (2009) *Rethinking the regulation of vulnerable work in the USA: A sector based approach*, Journal of Industrial Relations, 51(3), pp. 411–430.

Table 9 Distribution of employees (%) by weekly earnings in each NACE principal activity in 2014

NACE Principal Activity		Less than €400	€400 - €800	€800-€1,200	€1,200-€1,600	€1,600 or more
		%				
B-E	Industry	17.8	46.0	19.6	8.8	7.8
F	Construction	28.8	48.2	17.4	3.9	1.8
G	Wholesale and retail trade; repair of motor vehicles and motorcycles	51.9	35.5	7.3	2.6	2.7
H	Transportation and storage	25.7	47.4	18.0	4.9	3.9
I	Accommodation and food services	75.0	22.4	1.9	*	*
J	Information and communication	12.6	32.6	25.1	14.6	15.2
K-L	Financial, insurance and real estate	13.8	41.7	20.9	10.2	13.3
M	Professional, scientific and technical activities	25.8	41.7	16.4	7.4	8.7
N	Administrative and support services	45.0	43.5	7.0	2.1	2.3
O	Public administration and defence	9.1	39.0	33.3	14.2	4.3
P	Education	27.3	30.3	26.1	13.3	3.1
Q	Human health and social work	30.3	38.2	22.4	5.6	3.5
R-S	Arts, entertainment, recreation and other service activities	60.3	29.6	6.3	2.0	1.9
<b>Total</b>		<b>35.1</b>	<b>37.5</b>	<b>16.2</b>	<b>6.4</b>	<b>4.7</b>

\* Confidential

Figure CSO Ireland, Earnings Analysis using Administrative Data Sources

The Accommodation and Food Service sector is characterised by a higher frequency of tipping. The reality is that employees in this sector rely on tips to support themselves as a direct result of their precarious employment; any reduction in tips by the employer undermines the ability of these workers to support themselves and their families. Workers on precarious hours get little protection from minimum wage standards if they cannot get the hours to work. A wide body of international research has shown that these employees will face a range of negative impacts, including low levels of pay and higher risk of poverty. (ILO, 2016). This is an important context to remember when looking at the issue of tips and staff protection, particularly given that there continues to be little protection for these workers.

It is also worth noting that in Ireland, as in an international context, that there is a strong correlation between low pay and not having access to benefits in the workplace such as pensions, health insurance, access to paid leave or statutory leave, or access to health and safety equipment. There

are further issues that increase vulnerability, such as nationality, immigration status and language barriers which are more common issues for workers in this sector.

### **Solutions and Enforcement**

The Green Party *An Comhaontas Glas* support the National Minimum Wage (Protection of Employee Tips) Bill 2017 and welcome its highlighting of unfair workplace practices.

During the debate on this issue in the Seanad much reference was made to a Code of Conduct being the resolution for the issue of tips not being distributed equitably amongst workers. Presumably this idea of a code of conduct is drawn from the New Zealand and New South Wales models for transport workers and agricultural workers. We would respectfully submit that this approach is one that is attempting to resolve the symptoms of the issue and does not provide a solution for the causes of vulnerability, nor would a code of conduct approach provide the needed protections for employees.

As an example of how a voluntary code operates in the real world in this particular sector, in the UK, the Labour government issued in 2009 'A Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges'. This is a voluntary code that recommends restaurants are transparent about their tipping policies. Unite the Union in a briefing in 2015 reported that the code has been largely ignored.

Given the evidential lack of compliance with voluntary codes in this sector, it would be tempting to believe that legislation in and of itself, could resolve the problem. While legislation which provides for enforcement in this specific issue would be helpful for a marginal number of cases, it is unlikely that the State could provide the level of inspection required for enforcement to be effective. It is worth noting, for example, that Metcalf (2008) in his assessment of compliance with minimum wage

legislation in the UK found that while minimum wage legislation was effective at slowing the growth of pay inequality rates in aggregate, there were significant levels of breach of the legislation which due to a lack of enforcement continued despite the legislation being in place.

*“Each year since 1999–2000 HMRC has made around 5000 visits to an employer, some two fifths originating from a complaint to HMRC by a worker. In 2005–6 noncompliance was found in 1582 (32 percent) of cases. There are around 1.6m employers in the UK. Therefore a typical employer can expect a visit from HMRC once every 320 years and to be found not complying once a millennium.”<sup>4</sup>*

Viewing legislation and the enforcement thereof in this light, the Green Party *An Comhaontas Glas* submits that what is required is higher levels of Trade Union participation and therefore a guaranteed Trade Union access to these types of workplace would be helpful in this regard. To tackle this problem it is necessary to change the entire working environment and then allow individual actors to be guided by any legislation that is put in place.

In looking at the environment in which Tip abuse takes place, we must also look at the impact of changing patterns of spending. Currently the trend is for Tips to be taken via credit or debit cards at the time of total payment for the service provided. It is important for the protection of staff that they are provided full information relating to Tipping done in this manner or Tipping done online. Employers should also not be permitted to impose handling charge or fee to staff for credit card tips. Given the low percentages involved, it is not credible for an employer to claim that Tips are increasing their charges beyond marginal levels.

## **Impacts on Taxation**

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<sup>4</sup> Metcalf, D. (2008) ‘Why Has the British National Minimum Wage had Little or No Impact?’, *Journal of Industrial Relations* 50(3): 489–511.

The latest figures from the CSO (2014) suggest that circa 129,600 people in Ireland are working in the accommodation and food services sector<sup>5</sup>. As discussed above this suggests that over 95,000 of these workers are at risk of vulnerability, and therefore the negative externalities of such classification. While it is not possible to create a figure for the impact that such low level of pay has on the tax-take of the state, it is worth acknowledging that the restaurant and hospitality industry already enjoys low VAT rates and has lobbied for such rates to be retained in various pre-budget submissions<sup>6</sup>.

The National Minimum Wage (Protection of Employee Tips) Bill 2017 does not address taxation issues. The current position of Revenue is that where tips are routed through the employer, then PAYE, USC and PRSI must be applied to the amount paid, including employer PRSI. If tips are received directly from patrons, there is no obligation on the employer to operate PAYE, USC and PRSI on the amounts received. Employees are obliged to declare tips received in their annual return of income. In the case of credit card tips, the employer must operate PAYE, USC and PRSI on the tips received. There will be no change to these issues if the Bill is passed. Employees would be required to declare their tips to Revenue.

The Green Party *An Comhaontas Glas* are doubtful as to whether Tips can be taxed effectively. We would advise that Tips be defined by Revenue as an employer benefit. There is a precedent for this, which is the Cycle to Work scheme and travel passes which are employer benefits but are not taxed. Potential loss to Revenue is unlikely, as over 75% of workers are on low income and use Tips as disposable income, in which case the money comes back to the Exchequer through consumption

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<sup>5</sup> CSO Labour Market Principal Statistics - 2011-2014. Accessible at:

<https://www.cso.ie/en/statistics/labourmarket/principalstatistics/>

<sup>6</sup> Restaurant Association of Ireland, Pre Budget Submission 2018.

<http://www.rai.ie/mwg-internal/de5fs23hu73ds/progress?id=k7Ql3r-9LevIOYPexMHM8p8tmU-bhSAz1qW2XLFT14o>,

taxes. The administrative costs of regulating the practice is likely to be expensive, will penalise already low-paid workers and accrue little Revenue benefit.

Should concern remain regarding the potential loss to Revenue, the Green Party *An Comhaontas Glas* advises that the more progressive option would be to revise the 9% VAT rate for the hospitality sector as advised by the Department of Finance in their July 2018 review. The Department states that the 9% VAT rate is causing “significant deadweight”, is likely to lead to “overheating and aggregate productivity challenges” and finally, “the ongoing and cumulative costs of the reduced rate are substantial, estimated at €490m in 2017, and €2.6bn in total since its introduction”.

This would secure a greater income for Revenue in a progressive manner than a regressive tax on low-waged staff.

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