



Irish Hotels Federation

Submission to the Low Pay Commission

**The National Minimum Wage (Protection of Employee  
Tips) Bill 2017**

The Irish Hotels Federation (IHF) welcomes this opportunity to make a submission to the Low Pay Commission in relation to The National Minimum Wage (Protection of Employee Tips) Bill 2017 (**the “Bill”**).

As the national organisation of the hotel and guesthouse sector in Ireland, the IHF represents approximately 1,000 properties which employ in the region of 60,000 people.

At the outset, the IHF wishes to confirm that we fully support the payment of all tips and gratuities to staff.

However, the IHF does not support this Bill which, it submits, is unworkable and excessive. Much of the language contained in the Bill is far too vague to meet the requirements of legal certainty, a core principle of legal drafting. In the IHF’s view, it will give rise to confusion and uncertainty for employers and will lead to significant unnecessary administrative and cost burdens for employers.

The Bill, in its current form, principally prohibits employers from (i) withholding tips or gratuities from an employee, (ii) making a deduction from an employee’s tips or gratuities or (iii) causing the employee to return or give his/her tips or gratuities to the employer, unless authorised under the Bill.

The proposed legislation broadly defines ‘tips’ and ‘gratuities’ as:

- (a) a payment voluntarily made to or left for an employee by a customer of the employee’s employer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the employee or shared by the employee with other employees,
- (b) a payment voluntarily made to an employer by a customer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be redistributed to an employee or employees,
- (c) a payment of a service charge or similar charge imposed by an employer on a customer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be redistributed to an employee or employees, and
- (d) such other payments as may be prescribed by regulations, but does not mean:

- (i) such payments as may be prescribed by regulation; and
- (ii) such charges as may be prescribed relating to the method of payment used, or a prescribed portion of those charges.

It would appear that the Bill treats cash tips, tips paid through a credit/payment card and service charges in the same manner. It is the IHF's view that cash tips, tips paid through a credit/payment card and service charge are distinct from each other and therefore must be treated separately.

Cash tips are left at the discretion of the customer and the employer is currently not required to be involved in the distribution.

Tips paid through a credit/payment card are part of the books and records of a business and the employer has a clear responsibility to administer distribution and taxation on such tips. An internal policy, collective agreement or code of practice is usually agreed at employment level on how best to share and distribute these tips.

A service charge is not a tip or gratuity. A service charge is imposed upon the customer by the employer, the customer does not have the right to determine the amount of the charge. Therefore, the customer does not have the right or expectation to determine how the employer manages and treats this income stream. Service charges are often used to fund the cost of additional staff required to look after large parties. Therefore, service charge should not be the subject of this legislation which seeks to interfere in a contract between a business and a customer.

Section (4) (a) of the Bill introduces the requirement for an employer to display on menus or in another suitable manner its policy regarding the distribution of tips to employees.

Tips or gratuities are entirely discretionary; they are voluntarily left, gifted or added to the bill by a customer or a guest as a gesture of appreciation for the service they receive.

They are given in various forms:

- Customers or guests may leave cash upon departure from the hotel
- Customers or guests may add a tip or gratuity to their bill when paying by other means, for example, by credit/payment card
- Customers or guests may indicate a department or specific member of staff to whom they wish the tip or gratuity to be left to
- Customers or guests may not indicate to whom or to which department they wish the tip or gratuity to be left to

It is submitted that a statutory obligation to display a hotel's tips policy is not appropriate as it may suggest that guests are obliged or required to tip staff, and/or to tip in a certain manner.

If an employer volunteers to manage the distribution procedure, it would be appropriate for a clear policy to be available to relevant staff as part of their employment contract. It is common in hotels that tips are pooled among the team, and occasionally management, depending on the situation. For example, a guest may instruct that a tip is given to a particular employee as an acknowledgement of a job well done; the employee may be a member of the executive management team.

Section (4) (b) of the Bill, requires the Minister to introduce regulations to facilitate the introduction of Tronc schemes to ensure an equitable distribution of tips with the need for employer involvement.

The Tronc system of distributing tips has long been in use in the hospitality sector but on a voluntary basis and making the system obligatory for all hotels is unnecessary. Save where the employer voluntarily decides to manage the distribution procedure, employees should continue to be free to decide on their own system of distributing cash tips or gratuities. Tronc schemes or systems are fraught with difficulties and should under no circumstances be mandatory on the employer.

If an employer is found guilty of an offence under this proposed legislation, the employer could be liable to a fine of up to €2,500 and/or imprisonment of a term not exceeding 6 months. The Bill also provides for personal liability.

It is therefore possible that an individual could be imprisoned for a failure to pass on a tip to an employee, regardless of the value of the tip or the level of loss to the employee and without a clear direction on the requirement for proof. It is respectfully submitted that it is entirely excessive and disproportionate to make non-compliance with this legislation a criminal offence and, in particular, in an area where, for the most part, employers do not get and are reluctant to become involved.

[The IHF respectfully submits that employees who take issue with inappropriate or unlawful withholding of tips or gratuities by an employer who is involved in the distribution of tips or gratuities may bring a claim under the Payment of Wages Act 1991.]

## **In Summary**

We fully support the payment of all tips and gratuities to staff. However, we strongly oppose the Bill as currently drafted.

Employers generally do not involve themselves in cash tip management; they rarely come within the control of the hotel and are entirely handled by staff.

Cash tips are entirely at the discretion of customers and therefore outside the employment relationship.

Employers should not be required to manage the distribution of tips.

If an employer chooses to take control of the management of tips and gratuities, we recommend that this should be done by way of internal employment policies indicating the overall distribution policy and the method of calculation of the relevant individual's entitlements. A Code of Practice could be introduced to offer guidance to employers in this regard.

Separately, from a data protection perspective, an employer should not be required to disclose generally tip payments to individuals.

We strongly recommend the deletion of criminal sanction given the voluntary nature of tips and gratuities, the potential for injustice and/or dispute/speculation on what might have been the customer's intentions.

A service charge is not a tip or gratuity and should not be the subject of this legislation.