

## Changes to tip, service charge and gratuities policies

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The Employment (Allocation of Tips) Act 2023 (the “Act”), set to address longstanding concerns about the distribution of tips, was given Royal Assent in May 2023.

This issue was first consulted in 2016 after the media highlighted malpractice and unfair allocation of tips. Many employers have changed their tipping practices since the call for evidence, but there is currently no legal framework in the UK to dictate how businesses should distribute their tips.

The Act will come into force via secondary legislation on 1 October 2024. Here, we consider the changes that will be made to tipping practices in the UK and its effect on employers.

### Which payments are affected?

A tip or gratuity is described as ‘an uncalled for and spontaneous payment offered by a customer’. This payment can either be made directly to a worker (in cash), added to a bill (payable by cash, credit or debit card), or paid using a digital payment service or application.

### What is the current arrangement?

There are three main ways in which tips are distributed:

1. Tips paid by card are paid directly to the employer and become the legal property of the employer. The employer therefore can decide what to do with these tips; distribute them across the workforce or withhold them from staff, unless they are subject to any tronc arrangement.

2. Cash tips paid directly to a worker generally become the legal property of that worker. Employers are able to dictate or influence the redistribution of cash tips via their employment terms and conditions.
3. Cash tips which are paid into a tip pot or similar become the legal property of the employer and can be distributed as the employer wishes unless the tips are subject to a tronc or other form of distribution agreement.

A tronc is a special pay arrangement used to distribute tips in a National Insurance efficient way. A tronc must be controlled and managed by an independent person (known as a troncmaster) who is responsible for determining how tips should be allocated according to agreed terms and will report to HMRC.

## Why are changes being made?

With the development of a cashless society, tipping largely occurs via card payment and therefore most tips go directly to the employer rather than directly to their employees. In recent years, media attention has highlighted malpractice and unfair distribution of tips. These changes are directed at employers who currently retain tips in full, require workers to pay a percentage out of their tips accumulated during a shift or charge workers an administration fee for handling tips.

Paired with the pandemic and a cost of living crisis, the pressure on the government to act has amplified whilst workers increasingly rely on their tips to supplement their pay.

## What new obligations will employers have?

The new rules ensure that workers receive the full benefit of tip payments. The following measures will come into force on 1 October 2024.

- Employers will allocate qualifying tips to workers in a fair and transparent manner.
- Employers must pay qualifying tips to workers within one month of the end of the month in which they were received. There should be a streamlined process in place to deal with customer requests on how tips are managed. If tips are not paid on time, a member of staff can potentially claim up to £5,000 compensation.
- Employers must implement a written policy on allocating qualifying tips that is available to workers. This should be accessible by anyone and on public display in the work place. The written policy should include details on the allocation of qualifying tips and how they will be distributed. We can help to draft a policy or review one if this would be helpful.
- Employers must maintain records of all qualifying tips distributed and make this available to workers on request. Employees will now have a right to request information about an employer's tipping record once every three months. If an employee makes such a request, an employer must comply with this request within four weeks from the date it was requested. Any inconsistencies in the records can be used as evidence by an employee to bring a tribunal claim.

Workers will be able to enforce these new obligations through an Employment Tribunal.

'Qualifying' tips are those received by the employer which are then distributed to workers, or those received directly by workers, but whose final distribution amongst the workforce is subject to the employer's control or significant influence. Tips received directly by workers, and whose distribution amongst workers is not controlled or influenced by the business, are not within the scope of the new rules.

The legislation will apply to all workers, including those on zero-hours contracts.

For further information read [the draft Code of Practice](#).



## What do the changes mean for employers?

Employers should review their current arrangements for administering tips and determine if any actions need to be taken to be compliant with new employment law obligations from 1 October 2024. It is important to note that there will be no transition period. In order to avoid the consequences of non-compliance, employers will need to make any required changes to business operations before the legislation comes into effect.

## How we can help

For assistance in reviewing or amending your tips policies and procedures, please get in touch with our [employment team](#) who will be happy to help.



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