Do you have clients in the hospitality industry?

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In July 2024, the Employment (Allocation of Tips) Act 2023 is expected to come into force, via secondary legislation. This will see several changes to tipping practices, culminating in a right for workers to bring a claim against non-compliant businesses to the Employment Tribunal. Here we set out some of the main points that businesses need to know and may require practical help with.

The Act (see tinyurl.com/yn65e7wy) ensures that:

- workers (including agency workers) receive all qualifying tips, gratuities and service charges in full without deductions, except in very limited scenarios, such as deduction of income tax;
- tips are allocated fairly to workers – the legislation is silent as to what fair allocation would look like in practice, instead deferring that to a Code of Practice (see below); and

- payment in full of any tips due is made no later than the end of the month following the month in which the tips were paid.

Businesses will need to:

- be open and transparent about how tips are allocated;
- maintain a written policy on how tips are dealt with at their place of business, and ensure this policy is made available to all their workers;
- involve workers in forming a consensus on how tips should be allocated; and
- maintain a record of all tips paid at their place of business and their allocation and distribution between each worker, to which workers have the right to request access.

The new law means that some employers will pay service charges over to workers for the first time (as opposed to keeping them). If an employer is going to start passing on service charges to workers for the first time, then they must understand that this needs to be done under the Pay As You Earn (PAYE) system and that income tax and National Insurance (NIC) liabilities on the tips should be deducted before workers receive them. However, this also means that the workers should not have to do anything else to notify HMRC or the Department for Work and Pensions about the tips for tax or universal credit purposes.

Alternatively, to avoid incurring costs and/or to discharge some of their obligations (for example, the obligation to ensure that tips are allocated fairly or the obligation to operate PAYE), from a practical perspective, it seems to us that businesses may:

- Use a tronc system to allocate the tips independently of the employer: If operated correctly, such tips will not attract a Class 1 NIC liability. The draft Code of Practice (at paragraph 29, see tinyurl.com/t7yt92x3) says: 'Various tronc arrangements are permitted. An employer may directly appoint a member of staff to be responsible for allocating and distributing tips; and that member of staff can act as an independent tronc operator. An independent tronc operator may also be an external payroll or accountancy firm or alternatively a member of staff elected or agreed upon by the workers. Care is needed to maintain independence. Section 27F(6) of the 1996 Act provides further information on this.'
- Change their approach by adopting a no service charge policy: This means that workers are more likely to receive tips directly (for example, informal cash tips

left on the table). It is important to understand that the new rules do not change the underlying tax position for workers concerning these type of tips (see LITRG website guidance at tinyurl.com/3y8fb5nk).

A statutory Code of Practice that, among other things, would set out the principles of fairness and transparency that businesses must take into account will support the measures in the Act. This Code is currently being developed and was subject to formal consultation earlier this year.

LITRG responded to the consultation, making the point that the Code or other supporting guidance should instruct employers to signpost workers to some good and clear official government guidance on: how their tips are taxed (however their tips are paid); and what, if anything, they need to report (and to whom). You can read our short submission on the draft Code of Practice on our website: (see www.litrg.org.uk/10878).

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