

**The Employment (Allocation of Tips) Act 2023 (“Tipping Act”)**

**The Tipping Act & the Code of Practice**

The Tipping Act and its statutory Code of Practice came into effect on 1st October 2024 and it extends to England and Wales and Scotland. The legislation is available [here](https://www.legislation.gov.uk/ukpga/2023/13/enacted).

The purpose of the Act is to ensure the fair and transparent allocation of all tips, gratuities and service charges (including both automatically added and other voluntary service charges). The Act aims to increase fairness in tipping practices and create a level playing field for employers who already allocate all tips to workers by ensuring that all employers follow the same rules.

It is accompanied by a statutory Code of Practice which is available [here](https://www.gov.uk/government/publications/distributing-tips-fairly-statutory-code-of-practice) and an accompanying Explanatory Note is available [here](https://www.gov.uk/government/consultations/distributing-tips-fairly-draft-statutory-code-of-practice/outcome/explanatory-memorandum-to-the-updated-draft-code-of-practice-on-fair-and-transparent-distribution-of-tips).

Non-statutory guidance for employers has also been published and is available [here](https://www.gov.uk/government/publications/distributing-tips-fairly-non-statutory-guidance-for-employers). This includes practical examples on applying the statutory Code plus some high-level template examples. This guidance is non-sector specific and applies to any business where tips are received.

Employers must have regard to the Code when designing and implementing their tipping policies and practices. However, failure to fully observe the Code does not in itself amount to proof that an employer has been acting unfairly.

**Overview of the Act**

The Tipping Act amends the Employment Rights Act 1996 (“the 1996 Act”) so that employers are required to:

1. Pass on all tips and service charges to workers without deductions, except in very limited scenarios, such as deduction of income tax.
2. Ensure that tips are distributed in a fair and transparent manner when the employer takes control, or exerts significant influence, over their distribution.
3. Have regard to the Code of Practice on fairness and transparency of tip distribution when they are distributing or influencing the distribution of tips.
4. 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.
5. 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.

Through this legislation, employers are no longer able to retain tips left by customers for workers in recognition of good service. Employers are required to pass tips on to workers.

Workers have a right to request a copy of their tipping record in order to enable them to bring a claim to an Employment Tribunal where they believe they are not receiving the tips that they should be.

Only employer-controlled or distributed tips are in scope. If a worker receives and keeps a cash tip, with no employer control or involvement, the tip is out of scope for the Tipping Act and the Code. Digital tipping, whereby a customer uses an app to directly tip members of staff, bypassing the employer altogether, is also out of scope.

**Overview of the Code**

The Code does not set out an exhaustive list of factors for employers to consider. Instead, it provides overarching principles on what fairness is for the purposes of the Tipping Act, the areas in which employers need to make decisions to comply with their duties, and how they should apply these principles in their specific places of business.

The Code includes a Glossary of Terms.

**Workers in scope**

The Tipping Act applies to all workers, including agency workers. It does not apply to self-employed people. Employers should apply the principles of fairness, set out in paragraphs 19-26 of this Code, to the allocation and distribution of tips between workers. This includes when there is a mixture of permanent staff, directly recruited staff, agency workers and zero hours contract workers in the same location.

In the case of agency workers, any references to “employer” mean the hirer for this engagement i.e. the place of business where they are working, even where their contract of employment is with an employment agency. After the hirer has made the payment of tips to an employment agency, the agency is responsible for passing this on to agency workers, without unauthorised deductions.

**Fairness**

Employers should use a clear and objective set of factors to determine the allocation and distribution of tips. The choice of factors should be fair and reasonable given the circumstances and the nature of the individual business.

Employers must avoid any form of unlawful discrimination when selecting and applying the factors for allocating and distributing tips. Employers must take extra care to avoid indirect discrimination, which may be unintentional, which may be a risk when fewer tips are allocated to a group of workers which includes a disproportionate number of workers with a particular protected characteristic.

Employers should consult with workers to seek broad agreement in the workplace that the system of allocation of tips is fair, reasonable and clear. An employer’s approach to allocating tips should also be reviewed on a regular basis.

**Distribution**

An employer can choose to allocate and distribute tips fairly and transparently by using a tronc. Various tronc arrangements are permitted.

Employers must ensure that all tips are distributed to staff, at the latest, by the end of the month following the month in which the tips are paid by customers.

**Transparency**

An employer is required to have a written tipping policy when qualifying tips are paid at or are otherwise attributable to a place of business on more than an occasional and exceptional basis. The written policy should include how tips are accepted, how tips are allocated and distributed, and what steps the employer takes to ensure tips are handled fairly and transparently.

An employer cannot be said to have met its obligation to handle tips fairly and transparently if individual workers are not aware of their entitlements in line with the tipping policy. Employers are free to decide how to disseminate the written policy to their staff.

All staff should have the same access to the written policy. The policy must be written in plain language, and employers must provide an accessible format for any worker with a disability, on request.

Where agency workers are engaged, employers can provide those workers with a copy of the tipping policy themselves (electronically, or as a physical copy at the start of their engagement) or have the agency share the policy with the worker on their behalf.

An employer may share their written tipping policy with customers or display it publicly if they wish, but this is not a requirement of the Tipping Act.

**Record-keeping**

A tipping record must include detail of all qualifying tips received by the employer at the place of business, and the amount allocated to each worker.

This record must be maintained for a period of three years beginning with the date on which the tip was paid.

A worker has the right to make a written request – limited to one request per worker in a three-month period – to view the tipping record of their employer for a period dating back up to three years, provided they worked for the employer for the full duration of the requested period.

**Addressing problems**

An employer should ensure they have fair processes in place for resolving issues and responding to queries from workers who have not received the share of tips they expected to. For the purposes of fairness, employers should ensure they give equal weight to queries from agency workers as they do to their own, directly employed, staff.

If the issues remain unresolved, under the Tipping Act a worker can enforce their rights through the employment tribunal system. This includes agency workers.

**Next steps**

The BBPA will continue to engage with the DBT to seek clarification where necessary. This briefing note will be reviewed on an ongoing basis and updated accordingly.

**Contact**

BBPA members that have any questions about the Act or the Code can contact Andrew Green (agreen@beerandpub.com).

**Example scenarios**

As a result of ongoing discussions with the team at DBT, they have provided their view on a range of scenarios that we presented to them. In responding they have reiterated that they can’t give a precise answer on individual cases, as the specific circumstances would need to be examined by an employment tribunal. To that end, businesses may wish to seek their own legal advice.

1. **Cash tips allocated on site –** if cash tips are received at a site, and for which the agreed process for allocating those tips is devolved to the employees that work at that site, are these cash tips considered within scope? In such cases the allocation process has been agreed locally by staff rather than the employer.

Examples might include:

* Bar team pool their cash tips and this is divided by hours worked at the end of week by an allocated team member of the bar– often the Team Representative;
* Restaurant team members ‘tip out’ to the kitchen / bar teams according to the agreement at site – could be 10% could be 25% for example.

***DBT response*** *- Employers would need to exercise some caution in this instance. If cash tips are truly handled and divided by the workers themselves, without intervention or influence by the employer over the allocation process, then those tips would likely be considered out of scope as worker-received tips.*

*However, the involvement of an appointed “team representative” to facilitate dividing the tips could potentially suggest a level of employer control or oversight. This appointed representative role may be viewed as akin to that of an independent troncmaster. If the team representative facilitates the cash tips allocation in a manner that meets the criteria to be consider an independent tronc operator under section 27F(6) of the Act, then those cash tips could potentially still be viewed as outside the scope of the legislation. The key factors would be whether the employer reasonably considers the team representative to be operating the tipping allocation process independently, without employer control over the allocation decisions.*

*We understand this team representative approach to be a fairly common practice and is certainly allowed. In either instance, if the business commonly receives any qualifying tips, the business needs to have a tipping policy and provide it to staff in accordance with the tipping legislation.*

1. **Cash tips – recording the employer’s policy** – where an employer currently has no written policy on cash tips because the existing process is for each venue to decide how cash tips are allocated, does the legislation or the guidance require an employer to implement a written policy to formalise and recognise that practice?

The employer already advises staff of their responsibility to complete their own tax return to account for such cash tips. However, in addition to the employer having such a policy in place, does each venue also require its own policy for cash tips that are out of scope?

***DBT response -*** *If the business place receives tips on more than an occasional and exception basis, it needs to have a written tipping policy in place. If only cash tips are accepted and these are received by workers and not handled by the employer, the tips are out of scope but this can be what is reflected in the policy.*

**BBPA view –** Employers need to have at least a high-level policy for such tips, confirming that they are allocated on a basis agreed and operated by each venue. Where allocation of out of scope cash tips is undertaken by individual sites, it is still advisable to have a recorded policy on site, for transparency and fairness.

1. **Agency staff** **+ probation periods –** where a company operates a probation period for their own staff that includes a period where they are not entitled to tronc tips, (e.g. their first two weeks of employment), can the same policy be applied to agency staff?

***DBT response -*** *This approach appears to be acceptable, given that it represents equal treatment for agency and directly-engaged staff.*

1. **Hourly premium rates –** where staff, whether that is employed staff or agency staff, are being paid at a premium rate as an alternative to receiving any tips, can this continue within the legislation on the proviso it is freely-agreed and transparent?

***DBT response -*** *This has been raised by a range of stakeholders, but we are unable to definitely say whether paying premium hourly rates as an alternative to tips is fair or not fair practice, without deferring to the employment tribunal for judgement.*

**BBPA view –** In a situation where such a policy was clear, well communicated and satisfactory to all workers, it would appear unlikely to produce a claim to an employment tribunal. However, the fairness of such a policy or arrangement would need to be evaluated based on the specific circumstances.

1. **Staff entitlement to an allocation of tips –** there are likely to be a number of different staff employed on a site that are in addition to front of house and kitchen staff, such as cleaners, maintenance workers, reservation staff etc. Can an employer reasonably exclude such staff from tip allocation if they are not directly involved in the service, i.e. staff such as cleaners, maintenance workers, reservation staff can be excluded from tips?

***DBT response -*** *Yes, we have updated the language in the Code of Practice (paragraph 21) to state that “…employers should ensure they give due consideration to all of the workers involved in providing service to customers, including agency workers.”.*

*This preserves flexibility in allocation between the workers e.g. waiting staff and chefs, while making clear that allocation should be between those actually involved in the service.*

BBPA

1st October 2024



**How TiPJAR can help**

TiPJAR is the UK’s number 1 tipping and tronc solution specifically for hospitality, and is a Supply Chain Partner of the BBPA.

As external troncmasters, we work with operators and their staff to draft a tronc policy that is not only compliant - but fair in the eyes of the government and your staff. Our business is built on fairness and transparency in the allocation of tips or service charges and we are very passionate about finding a viable solution that truly benefits staff, as well as the businesses they work for.

TiPJAR’s Supertronc product ensures staff are paid their tips and service charge weekly, and makes it really simple to distribute tips and service charges across dark or service kitchens to the estate. By operating a compliant tronc, the business will benefit from significant savings of 13.8% on National Insurance contributions associated with tips.

TiPJAR’s solutions not only streamline tip administration but also provide a strategic approach to NICs, maximising cost-effectiveness for both businesses and staff. Through the implementation of a compliant tronc policy, SuperTronc enures you’re compliant, out of the box! We’ve also collaborated with The Tronc Advisor to facilitate the recovery of historical NICs exceeding £25 million for businesses, highlighting the substantial financial benefits of our solution.

To discover more, book a demo [here](https://www.wearetipjar.com/uncategorised/meet-tipjar-your-pubs-best-friend/?utm_source=bbpa&utm_medium=tipping+legislation&utm_campaign=Pub+and+bar+24), or contact Hannah Bray at TiPJAR (Hannah@wearetipjar.com).