



An Bille um Pá Íosta Náisiúnta (Séisíní Fostaithe a Chosaint), 2017
National Minimum Wage (Protection of Employee Tips) Bill 2017

Mar a tionscnaíodh

As initiated



**AN BILLE UM PÁ ÍOSTA NÁISIÚNTA (SÉISÍNÍ FOSTAITHE A CHOSAINT), 2017
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ACTS REFERRED TO

National Minimum Wage Acts 2000 and 2015

Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict., c.93)

Workplace Relations Act 2015 (No. 16 of 2015)



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NATIONAL MINIMUM WAGE (PROTECTION OF EMPLOYEE TIPS) BILL 2017

Bill

entitled

An Act to amend the National Minimum Wage Act 2000 to provide for additional 5
protections for employees in the service sector to ensure they receive tips or gratuities
paid by customers and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act— 10
- “Principal Act” means the National Minimum Wage Act 2000;
- “The Minister” means the Minister for Enterprise, Trade and Employment;
- “Tronc scheme” means a common fund into which tips and service charges are paid for
distribution to the staff.

Amendment of section 2 of Principal Act 15

2. (1) Section 2 of the Principal Act is amended, in subsection (1), by the insertion of the
following:
- (a) before the definition of “contract of employment” by inserting the following:
- “ ‘Act of 2017’ means the National Minimum Wage (Protection of
Employee Tips) Act 2017;”, 20
- (b) after the definition of “prescribed” by inserting the following:
- “ ‘tip or other gratuity’ means;
- (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 25
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 30
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 5
 - (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;”, 10
- (c) before the definition of “working hours” by inserting the following:
- “ ‘Tronc scheme’ means a common fund into which tips and service charges are paid for distribution to the staff;”.

Protection of Employee Tips

3. Part 3 of the Principal Act is amended by the insertion of the following section after section 10E: 15
- “10F.** (1) An employer shall not withhold tips or other gratuities from an employee, make a deduction from an employee’s tips or other gratuities or cause the employee to return or give his or her tips or other gratuities to the employer unless authorised to do so under this Part. 20
- (2) If an employer contravenes subsection (1), the amount withheld, deducted, returned or given is a debt owing to the employee and is enforceable under this Act as if it were wages owing to the employee.
- (3) (a) A claim by an employee against an employer for redress under this section may be referred by the employee to the Director General and, where such a claim is so referred, the Director General shall, subject to section 39 of the Workplace Relations Act 2015, refer the claim to an adjudication officer for adjudication by that office. 25
- (b) An adjudication officer to whom a claim for redress is referred under this section shall— 30
- (i) inquire into the claim,
 - (ii) give the parties to the claim an opportunity to be heard by the adjudication officer and to present to the adjudication officer any evidence relevant to the claim, 35
 - (iii) make a decision in relation to the claim consisting of an award of redress or the dismissal of the claim, and
 - (iv) give the parties to the claim a copy of that decision in writing.
- (c) Section 44 of the Workplace Relations Act 2015 shall apply to a decision of an adjudication officer given in respect of a claim for 40

redress under this Act by an employee as it applies to a decision of an adjudication officer given in proceedings under section 41 of that Act.

- (4) (a) An employer shall display on menus or in another suitable manner its policy regarding the distribution of tips to employees. 5
- (b) The Minister shall introduce regulations to facilitate the introduction of Tronc schemes to ensure an equitable distribution of tips with the need for employer involvement.
- (c) Subject to subsections (d) and (e), an employer or a director or shareholder of an employer may not share in tips or other gratuities redistributed under this section. 10
- (d) An employer who is a sole proprietor or a partner in a partnership may share in tips or other gratuities redistributed under subsection (1) if he or she regularly performs to a substantial degree the same work performed by— 15
 - (i) some or all of the employees who share in the redistribution, or
 - (ii) employees of other employers in the same industry who commonly receive or share tips or other gratuities.
- (e) A director or shareholder of an employer may share in tips or other gratuities redistributed under subsection (a) if he or she regularly performs to a substantial degree the same work performed by— 20
 - (i) some or all of the employees who share in the redistribution, or
 - (ii) employees of other employers in the same industry who commonly receive or share tips or other gratuities.”.

Offences 25

4. Part 5 of the Principal Act is amended by the insertion of the following section after section 35:

- “35A. (1) An employer who withholds tips or other gratuities from an employee, makes a deduction from an employee’s tips or other gratuities or causes the employee to return or give his or her tips or other gratuities to the employer without lawful excuse shall be guilty of an offence. 30
- (2) Where the employer charged is found guilty of an offence under this section, evidence may be given of any like contravention on the part of the employer in respect of any period during the 3 years immediately preceding the date of the offence. 35
- (3) A person guilty of an offence under this section for which no penalty, other than under this section, is provided shall be liable on summary conviction, to a fine not exceeding €2,500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months, or to both the fine and the imprisonment. 40
- (4) Where an offence under this section is committed by a body corporate

or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person (as well as the body corporate) shall be guilty of an offence and be liable to be proceeded against and punished as if guilty of the offence committed by the body corporate. 5

(5) Proceedings in relation to a summary offence under this Act may be prosecuted by the Minister. 10

(6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under this Act may be instituted within 12 months from the date of the discovery of the offence.”.

Transitional Provisions — collective agreements 15

5. (1) If a collective agreement that is in effect on the day *section 4* of this Act comes into force contains a provision that addresses the treatment of employee tips or other gratuities and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

(2) Following the expiry of a collective agreement described in *subsection (1)*, if the provision that addresses the treatment of employee tips or other gratuities remains in effect, *subsection (1)* continues to apply to that provision, with necessary modifications, until a new or renewal agreement comes into effect. 20

Short title, collective citation, construction and commencement

6. (1) This Act may be cited as the National Minimum Wage (Protection of Employee Tips) Act 2017. 25

(2) This Act and the National Minimum Wage Acts 2000 and 2015 may be cited together as the National Minimum Wage Acts 2000 to 2017 and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister. 30

An Bille um Pá Íosta Náisiúnta (Séisíní
Fostaithe a Chosaint), 2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta um Pá Íosta Náisiúnta 2000 chun socrú a dhéanamh maidir le cosaintí breise d'fhostaithe in earnáil na seirbhísí chun a chinntiú go bhfaighidh siad séisíní nó aiscí a bheidh íoctha ag custaiméirí agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*Na Seanadóirí Paul Gavan, Trevor Ó Clochartaigh
agus Fintan Warfield a thug isteach,*

21 Márta, 2017

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Employee Tips) Bill 2017

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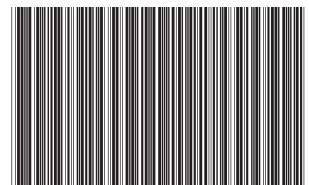
*Introduced by Senators Paul Gavan, Trevor Ó
Clochartaigh and Fintan Warfield,*

21st March, 2017

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