



SEANAD ÉIREANN

**AN BILLE UM ÍOC PÁ (LEASÚ) (SÉISÍNÍ AGUS AISCÍ), 2022
PAYMENT OF WAGES (AMENDMENT) (TIPS AND
GRATUITIES) BILL 2022**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM ÍOC PÁ (LEASÚ) (SÉISÍNÍ AGUS AISCÍ), 2022 —AN COISTE

PAYMENT OF WAGES (AMENDMENT) (TIPS AND GRATUITIES) BILL 2022 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 1

*1. In page 3, between lines 16 and 17, to insert the following:

“ “Minister” means the Minister for Enterprise, Trade and Employment;”.

SECTION 2

*2. In page 3, line 21, to delete “4E” and substitute “4F#”.

[#This is the correct reference if amendment No. 50 is accepted.]

*3. In page 3, line 22, to delete “mandatory service charge” and substitute “mandatory charge”.

4. In page 4, between lines 10 and 11, to insert the following:

“(c) mandatorily made to an employer, or to a person engaging contract workers, by a customer, in the form of a mandatory service charge;”.

—Senators Alice-Mary Higgins, Frances Black.

5. In page 4, between lines 10 and 11, to insert the following:

“(c) mandatorily made to an employer, or to a person engaging contract workers, by a customer, in the form of a mandatory service charge, in circumstances in which a reasonable person would be likely to infer that the customer intended or assumed that the payment would be distributed to an employee, a group of employees or to a contract worker;”.

—Senators Alice-Mary Higgins, Frances Black.

SECTION 3

*6. In page 4, line 18, to delete “4E” and substitute “4F#”.

[#This is the correct reference if amendment No. 50 is accepted.]

*7. In page 4, line 20, to delete “4D” and substitute “4E#”.

[#This is the correct reference if amendment No. 50 is accepted.]

[SECTION 3]

*8. In page 4, line 24, to delete “4E” and substitute “4F#”.

[#This is the correct reference if amendment No. 50 is accepted.]

*9. In page 4, line 35, to delete “4D” and substitute “4E#”.

[#This is the correct reference if amendment No. 50 is accepted.]

*10. In page 4, line 39, to delete “service”.

*11. In page 5, line 4, to delete “4D” and substitute “4E#”.

[#This is the correct reference if amendment No. 50 is accepted.]

*12. In page 5, line 29, to delete “4E” and substitute “4F#”.

[#This is the correct reference if amendment No. 50 is accepted.]

*13. In page 5, line 34, to delete “service”.

*14. In page 5, line 39, to delete “4E” and substitute “4F#”.

[#This is the correct reference if amendment No. 50 is accepted.]

15. In page 6, between lines 14 and 15, to insert the following:

“Treatment of mandatory service charge

4AA. (1) An employer to which this section applies shall, in a manner that is fair in the circumstances and in accordance with this Act, distribute to his or her employees any mandatory service charges received by the employer.

(2) Subject to subsection (3), an employer shall not retain any share of mandatory service charges received by the employer.

(3) An employer may only retain a share of mandatory service charges received by the employer—

(a) in so far as such retention is required or permitted by this Act, or

(b) where he or she regularly performs, to a substantial degree, the same work performed by some or all of the employees, such amount which is fair and reasonable in the circumstances.

(4) In considering a complaint under Part 4 of the Workplace Relations Act 2015 regarding whether or not a distribution under subsection (1) of mandatory service charges to an employee is fair, an adjudication officer shall have regard to all of the factors or circumstances that he or she considers relevant, including—

(a) the seniority or experience of the employee,

(b) the value of sales, income or revenue generated for the business by the employee,

(c) the proportion or number of hours worked by the employee during the pay period in which the mandatory service charge was made,

[SECTION 3]

- (d) whether the employee is on a full-time or part-time contract of employment,
 - (e) the role and influence of the employee in providing service to customers,
 - (f) whether the employee was consulted in relation to the manner of distribution, and
 - (g) whether there is an agreement, whether formal or informal, between the employer and the employee providing for the manner in which mandatory service charges are to be distributed.
- (5) (a) An employer to which this section applies shall, no later than 10 days from the date on which a distribution of mandatory service charges is made, give or cause to be given to an employee a statement in writing specifying clearly—
- (i) the total amount of mandatory service charges distributed by the employer for the period to which the statement relates, and
 - (ii) the amount of mandatory service charges distributed to the employee to whom the statement is provided.
- (b) The employer shall take such reasonable steps as are necessary to ensure that both the matter to which the statement under paragraph (a) relates and the statement are treated confidentially by the employer and his or her agents and by any other employees.
- (6) Where a statement under this section contains an error or omission, the statement shall be regarded as complying with the provisions of this section if it is shown that the error or omission was made by way of a clerical mistake or was otherwise made accidentally and in good faith.
- (7) An employer to which this section applies shall, before establishing or making a material change to its policy on the manner in which mandatory service charges shall be distributed among employees, consult with those employees.
- (8) An employer who contravenes subsection (1) or (5)(a) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.”.

—*Senators Alice-Mary Higgins, Frances Black.*

16. In page 6, to delete line 15 and substitute “**Treatment of certain tips, gratuities and mandatory service charges**”.

—*Senator Paul Gavan.*

17. In page 6, line 18, to delete “or” where it secondly occurs and substitute “and”.

—*Senator Paul Gavan.*

[SECTION 3]

18. In page 6, line 18, after “gratuities” to insert “and mandatory service charges”.

—*Senator Paul Gavan.*

19. In page 6, line 18, after “by” where it secondly occurs to insert “means of monetary payment and/or”.

—*Senator Paul Gavan.*

20. In page 6, line 21, to delete “or” and substitute “and”.

—*Senator Paul Gavan.*

21. In page 6, line 21, after “gratuities” to insert “and mandatory service charges”.

—*Senator Paul Gavan.*

22. In page 6, line 21, after “by” where it secondly occurs to insert “means of monetary payment and/or”.

—*Senator Paul Gavan.*

23. In page 6, line 23, to delete “or” and substitute “and”.

—*Senator Paul Gavan.*

24. In page 6, line 23, after “gratuities” to insert “and mandatory service charges”.

—*Senator Paul Gavan.*

25. In page 6, line 24, after “by” to insert “means of monetary payment and/or”.

—*Senator Paul Gavan.*

*26. In page 6, to delete lines 26 to 28 and substitute the following:

“(b) where that employer—

- (i) regularly performs, to a substantial degree, the same work performed by some or all of the employees, and
- (ii) retains a share of tips or gratuities received by an electronic mode of payment that is no more than an amount that is fair and reasonable in the circumstances having regard to the amount of such work so performed by that employer.”.

27. In page 6, line 31, to delete “or” and substitute “and”.

—*Senator Paul Gavan.*

28. In page 6, line 31, after “gratuities” to insert “and mandatory service charges”.

—*Senator Paul Gavan.*

29. In page 7, line 7, to delete “or” and substitute “and”.

—*Senator Paul Gavan.*

[SECTION 3]

30. In page 7, line 7, after “gratuities” to insert “and mandatory service charges”.
—*Senator Paul Gavan.*
31. In page 7, line 9, to delete “or” and substitute “and”.
—*Senator Paul Gavan.*
32. In page 7, line 9, after “gratuities” to insert “and mandatory service charges”.
—*Senator Paul Gavan.*
33. In page 7, line 12, to delete “or” and substitute “and”.
—*Senator Paul Gavan.*
34. In page 7, line 12, after “gratuities” to insert “and mandatory service charges”.
—*Senator Paul Gavan.*
35. In page 7, line 13, after “relates” to insert “, including the share of tips, gratuities, and mandatory service chargers distributed to the employer”.
—*Senator Paul Gavan.*
36. In page 7, line 14, to delete “or” and substitute “and”.
—*Senator Paul Gavan.*
37. In page 7, line 14, after “gratuities” to insert “and mandatory service charges”.
—*Senator Paul Gavan.*
38. In page 7, line 25, to delete “or” and substitute “and”.
—*Senator Paul Gavan.*
39. In page 7, line 26, after “gratuities” to insert “and mandatory service charges”.
—*Senator Paul Gavan.*
- *40. In page 7, line 27, to delete “service”.
- *41. In page 7, line 29, to delete “(1) or”.
42. In page 7, line 30, to delete “class C” and substitute “class A”.
—*Senator Paul Gavan.*
43. In page 7, line 35, to delete “or” and substitute “and”.
—*Senator Paul Gavan.*
44. In page 7, line 35, after “gratuities” to insert “, including tips and gratuities paid in cash,”.
—*Senators Alice-Mary Higgins, Frances Black.*
45. In page 7, line 35, after “gratuities” to insert “and mandatory service charges”.
—*Senator Paul Gavan.*

[SECTION 3]

46. In page 7, between lines 36 and 37, to insert the following:

“(aa) without prejudice to the generality of section 5(1), make a deduction from an employee’s wages in respect of mandatory service charges, or”.

—*Senators Alice-Mary Higgins, Frances Black.*

*47. In page 7, line 37, to delete “an employee’s tips or gratuities” and substitute “tips or gratuities to be distributed, in accordance with section 4B, to an employee,”.

48. In page 8, to delete lines 1 to 3.

—*Senators Alice-Mary Higgins, Frances Black, Paul Gavan.*

49. In page 8, between lines 3 and 4, to insert the following:

“(2) An employer who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.”.

—*Senators Alice-Mary Higgins, Frances Black.*

*50. In page 8, between lines 3 and 4, to insert the following:

“Treatment of matters described as service charge

4D. (1) Where an employer to which this section applies—

(a) describes a charge (including a mandatory charge) imposed on a customer as a ‘service charge’, or any similar or cognate term, whether in a tips and gratuities notice or in any other medium, or

(b) in any other way leads customers to believe that a mandatory charge shall be distributed to employees,

the employer shall treat all payments, whether made by an electronic mode of payment or any other means, received from customers pursuant to such a charge as if any such payment was a tip or gratuity received by an electronic mode of payment.

(2) An employer who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.”.

*51. In page 8, line 5, to delete “4D” and substitute “4E#”.

[#This is the correct reference if amendment No. 50 is accepted.]

52. In page 8, line 6, to delete “a notice” and substitute “notices”.

—*Senators Alice-Mary Higgins, Frances Black.*

53. In page 8, lines 6 and 7, to delete “a notice (in this Act referred to as a ‘tips and gratuities notice’)” and substitute the following:

“at least one notice (in this Act referred to as a ‘tips and gratuities notice’), but as many as are required such that they would be clearly visible to all customers,”.

[SECTION 3]

—*Senators Alice-Mary Higgins, Frances Black.*

54. In page 8, line 6, after “notice” to insert “prominently and in such a way that it would be clearly visible to all customers”.

—*Senators Alice-Mary Higgins, Frances Black.*

55. In page 8, line 6, after “notice” to insert the following:

“prominently and in such a way that it would be clearly visible to all customers, including on each individual menu,”.

—*Senators Alice-Mary Higgins, Frances Black.*

56. In page 8, to delete lines 8 to 12 and substitute the following:

“(a) the manner in which tips and gratuities, including tips and gratuities paid in cash, are distributed to and among employees, and the amounts so distributed,”.

—*Senators Alice-Mary Higgins, Frances Black.*

57. In page 8, line 8, after “gratuities” to insert “, including tips and gratuities paid in cash,”.

—*Senators Alice-Mary Higgins, Frances Black.*

- *58. In page 8, line 13, to delete “service”.

59. In page 8, line 15, after “and” where it secondly occurs to insert the following:

“if not, how and to whom they are otherwise distributed, and in what amounts they are distributed, and”.

—*Senators Alice-Mary Higgins, Frances Black.*

- *60. In page 8, line 24, to delete “service”.

61. In page 8, line 30, after “displayed” to insert “, such that the notice is prominent and clearly visible to all business customers”.

—*Senators Alice-Mary Higgins, Frances Black.*

62. In page 8, line 32, to delete “class C” and substitute “class A”.

—*Senator Paul Gavan.*

- *63. In page 8, line 34, to delete “4E” and substitute “4F#”.

[#This is the correct reference if amendment No. 50 is accepted.]

64. In page 8, line 35, to delete “a notice” and substitute “notices”.

—*Senators Alice-Mary Higgins, Frances Black.*

65. In page 8, lines 35 and 36, to delete “a notice (in this Act referred to as a ‘contract worker tips and gratuities notice’)” and substitute the following:

“at least one notice (in this Act referred to as a ‘contract worker tips and gratuities notice’), but as many as are required such that they would be clearly visible to all customers,”.

[SECTION 3]

—*Senators Alice-Mary Higgins, Frances Black.*

66. In page 8, line 35, after “notice” to insert “prominently and in such a way that it would be clearly visible to all customers”.

—*Senators Alice-Mary Higgins, Frances Black.*

67. In page 8, line 35, after “notice” to insert the following:

“prominently and in such a way that it would be clearly visible to all customers, including on each individual menu,”.

—*Senators Alice-Mary Higgins, Frances Black.*

68. In page 8, to delete lines 37 to 41 and substitute the following:

“(a) the manner in which tips and gratuities, including tips and gratuities paid in cash, are distributed to and among contract workers, and the amounts so distributed,”.

—*Senators Alice-Mary Higgins, Frances Black.*

69. In page 8, line 37, after “gratuities” to insert “(including tips and gratuities paid in cash)”.

—*Senators Alice-Mary Higgins, Frances Black.*

- *70. In page 9, line 1, to delete “service”.

71. In page 9, line 3, after “and” where it secondly occurs to insert the following:

“if not, how and to whom they are otherwise distributed, and in what amounts they are distributed, and”.

—*Senators Alice-Mary Higgins, Frances Black.*

- *72. In page 9, line 13, to delete “service”.

73. In page 9, line 20, after “displayed” to insert “, such that the notice is prominent and clearly visible to all business customers”.

—*Senators Alice-Mary Higgins, Frances Black.*

74. In page 9, line 22, to delete “class C” and substitute “class A”.

—*Senator Paul Gavan.*

SECTION 5

- *75. In page 9, line 38, to delete “4D” and substitute “4E#”.

[#This is the correct reference if amendment No. 50 is accepted.]

- *76. In page 10, line 2, to delete “service”.

SECTION 6

- *77. In page 10, between lines 3 and 4, to insert the following:

“Amendment of section 27 of Act of 2015

6. Section 27 of the Act of 2015 is amended by the insertion of the following subsection

[SECTION 6]

after subsection (8):

“(9) Where an inspector exercises powers under this section in relation to section 4F# of the Payment of Wages Act 1991, references in this section to employer shall be read as references to a person to whom the said section 4F applies, references in this section to employee shall be read as references to a contract worker within the meaning of that Act and references in this section to the employment of persons shall be read as including a reference to the relationship between such persons and such contract workers.”.

[#This is the correct reference if amendment No. 50 is accepted.]

*78. In page 10, line 7, to delete “sections 4(4) and 4D(3)” and substitute “sections 4(4), 4B(8), 4D(2)#, 4E(3)# and 4F(3)#”.

[#These are the correct references if amendment No. 50 is accepted.]

SECTION 7

* Section proposed to be deleted.

SECTION 8

*79. In page 10, line 14, to delete “4B” and substitute “4B(1) and (2)”.

SECTION 9

*80. In page 10, between lines 14 and 15, to insert the following:

“Review of operation of Act

9. (1) The Minister shall, not later than 12 months after the date on which the Minister first makes regulations under subsection (1) or (2), as the case may be, of section 4A of the Payment of Wages Act 1991, begin preparing a report on the operation of the amendments made to that Act by this Act.
- (2) The Minister shall, not later than 6 months after beginning to prepare a report under *subsection (1)*, publish the report and cause a copy of that report to be laid before each House of the Oireachtas.
- (3) In preparing a report under *subsection (1)*, the Minister shall consult with such other Ministers of the Government as he or she considers appropriate.”.

*81. In page 10, lines 18 and 19, to delete “for Enterprise, Trade and Employment ”.