

Joint Oireachtas Committee Employment Affairs and Social Protection

Statement on the Payment of Wages (Amendment) Act 2019

On behalf of the ONE Galway movement, which is a collaborative initiative between trade unions, student unions and Community Groups in Galway, I am pleased to address this Committee on the general issue of tipping practices in the hospitality sector but with specific reference to our views on the Payment of Wages (Amendment) Act 2019, which is before the Committee.

In opening I am going to be very blunt and say this, the legislation, which is being scrutinised here today, simply does not address the relevant issues relating to tips.

In Fact, it's to contradict what has been stated by the Fine Gael party on various new media, in which they claimed that this proposed legislation "would give a **legal right to tips for workers and staff**", that is simply not true.

This proposed legislation does not go anywhere towards addressing the employees' right to their tips, the lack of transparency for staff about what happens to their tips or indeed and equally important, transparency for the general public as to where their tips go. There simply is no legal protection for employees regarding tips being proposed in this bill. To propose that a bad employer will no longer be able to use tips as a top up to a contracted wage is a positive step but it **still** allows for a bad employer to withhold that tip money to use for other business purposes such breakages, walkouts or entertainment, it just now can't be used to top up a contracted wage. The bill is also shockingly silent on how tips should or could be distributed. Our extensive anecdotal evidence, and emerging independent empirical evidence, is that using tips to top up wages is a relatively minor issue compared to other reasons for with-holding tips, or indeed no reason at all besides the will of the employer

This proposed bill will change nothing for vulnerable hospitality workers, who are having their tips regularly stolen from them. In fact, it could mean that because now that the employer cannot top up their wage with the tip, the staff could end back on minimum wage and **still** no protection or transparency on their tip money.

Our campaign research has shown us that not all employers engage in withholding tip money, but as there is little or no transparency in the distribution of tips it is unclear to employees what percentage of tips they are actually receiving, with some indicating that on a very busy week, they would receive similar tip money to a very quiet week. This situation is enough to justify a definitive change in legislation to address this blind spot on the legal ownership of tips. Restaurants in Galway have endorsed and supported our campaign because they believe legal clarity is required and only fair, where tips are concerned.

We are suggesting that this Bill does not go far enough for workers, for the trade unions who represent them, for good employers in the sector.

This is a five billion Euro sector, but one in which has the highest percentage of minimum wage workers, who are some of the lowest paid [€324] and vulnerable workers in the economy. And whilst we understand that tipping is arbitrary and discretionary, and **no substitute** for the Living Wage (which we would ask the Government to implement), we are asking you here today to ensure that employees are able to take home the money they actually earn.

And whilst we welcome the opportunity to discuss this Bill here today, there is another piece of legislation being held up in this very establishment, which we believe would address the concerns of workers and I want to take this opportunity to address some of the criticisms of that legislation as follows;

- In our view the LPC report issued recommendations without adequate consultation with workers nor in-depth research into the sector, which my colleague will comment on in much greater detail;
- We disagree with the Minister that this legislation is dealing with the “more contentious issues relating to the treatment of tips” because we believe that it is more contentious that employees, under this legislation, will still not have a right to their tips;
- We also believe that the PMB should not be stalled in favour of this Bill because of “potential unanticipated consequences”. The unintended consequences for workers employed in this sector is not being able to pay their rent, put fuel in their car, or continue in college because the tips they relied on, because they have to, are taken from them with no recourse of action or right to resolve this;
- Our estimates suggest that workers will not be faced to a massive tax bill by revenue, as we believe their hours of work and earnings are such that the declaration of their tips for tax will barely raise them above the tax threshold;
- We have also heard that the cost to the WRC and labour inspections would be too high a cost to the Exchequer, yet the Minister’s office suggests that their amendment will be close to a cost neutral piece of legislation;

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Our campaign is very clear, it is calling for greater transparency in the appropriation and distribution of tips in the hospitality sector and that employees have a right to their tips. So how might it work? One example of how this might be implemented and would deal with the transparency issue is the area of card tips.

Acknowledging that we are moving towards a cashless society and with more and more tips being paid by card, securing, **at the very least**, the right to card tips for employees would address some of the issues raised here today; transparency in the system and the right to tips. It would also;

- A) Provide transparency to customers knowing that the tip on the card will be received by workers, which is not currently the case;
- B) Provide transparency for staff who will have a record of tips paid through the card system which can then be transferred to payroll and distributed in an agreed manner amongst the staff;
- C) Provide transparency for employers knowing that customers deliberately made a payment on their card intended for the staff;

- D) The card tips are already separated out and could then seamlessly be transferred to the payroll system, from which it will be distributed in an agreed and fair manner based on a pro-rata of working hours, with tax already paid via payroll;
- E) The transparency of such a system would mean the sticker of notice on tips policy would have genuine legitimacy;
- F) As the payments are already recorded there is little additional cost to the employer, however, this system also provides evidence of practice.

Including such provision would bring the Minister's proposed bill a little closer to giving workers protection of their tips, transparency for customers and something good employers would naturally support.

Clem Shevlin (SIPTU)

ONE Galway movement

4th October 2019