



IRISH HOTELS FEDERATION

SUBMISSION TO THE
JOINT COMMITTEE ON EMPLOYMENT AFFAIRS
AND SOCIAL PROTECTION

TOPIC: PRE-LEGISLATIVE SCRUTINY OF THE
PAYMENT OF WAGES (AMENDMENT) BILL 2019.

Thursday 10 October 2019 at 10.30am

Introduction

The Irish Hotels Federation (IHF) welcomes this opportunity to make a submission to the Joint Committee on Employment Affairs and Social Protection following the referral of the General Scheme of the Payment of Wages (Amendment) Bill 2019, for pre-legislative scrutiny.

As the national organisation of the hotel and guesthouse sector in Ireland, the IHF represents approximately 1,000 properties which employ in the region of 60,000 people.

Let us be very clear at the outset, the IHF view is that:

1. We fully support the payment of all tips and gratuities to staff.
2. Each establishment should display clearly to staff and customers how Tips, Gratuities and Service Charges are treated.
3. Service Charges levied by a business (as distinct from tips and gratuities) are part of business revenues and as such can be applied to meet all business costs including salaries.

It is worth reflecting on the views expressed by the Low Pay Commission (LPC) on this issue. The Minister requested that the Low Pay Commission examine this area as part of its 2018 work programme and report its findings and any recommendations it might consider appropriate. The Commission, adhering to its evidence-based approach, instigated a consultation process with relevant stakeholders and also engaged with the Workplace Relations Commission and the Revenue Commissioners. Current practices in other jurisdictions were also examined.

In their Report (**LPC NO. 10 (2018)**) The Low Pay Commission reached a number of conclusions in relation to tips and gratuities in Ireland including:

- The Commission does not believe that sufficient reliable data exists to prove that the issue of employers withholding employee tips is a significant problem in Ireland.

- The Commission does not believe that legislation or regulation should be introduced in this area as the administrative and compliance costs involved would not be justified.

The IHF notes that agreement on the LPC conclusions was unanimous - with all employer, trade union and independent members of the Commission endorsing the conclusions as set out.

Background

This is a complex area and if we reflect on the range of responses to The National Minimum Wage (Protection of Employee Tips) Bill 2017 we have an opportunity to ensure that key points of principle are clearly addressed in any proposed new legislation sponsored by Government.

Much of the language contained in the Bill was far too vague to meet the requirements of legal certainty, a core principle of legal drafting. In the IHF's view, it would have given rise to confusion and uncertainty for employers and would have led to significant, unnecessary administrative and cost burdens for employers.

Understanding Key Definitions

It is the IHF's view that cash tips, tips paid through a credit/payment card and service charge are distinct from each other and therefore must be treated separately.

1. Cash tips are left at the discretion of the customer and the employer is currently not required to be involved in the distribution.
2. Tips paid through a credit/payment card are part of the books and records of a business and the employer has a clear responsibility to administer the distribution and taxation on such tips. An internal policy, collective agreement or code of practice is usually agreed at employment level on how best to share and distribute these tips.
3. A service charge is not a tip or gratuity. A service charge is applied by the business on a customer who does not have the right to determine the amount of the charge. Therefore, the customer does not have the right

or expectation to determine how the employer manages and treats this income stream. A charge for service should not be the subject of this legislation as to do so would interfere in a contract between a business and a customer.

Tips or gratuities are entirely discretionary; they are voluntarily left, gifted or added to the payment by a customer or a guest as a gesture of appreciation for the service they receive.

They are given in various forms:

- Customers or guests might leave cash upon departure from the hotel.
- Customers or guests might add a tip or gratuity to their payment when paying by other means, for example, by credit/payment card.
- Customers or guests might indicate a department or specific member of staff to whom they wish the tip or gratuity to be left to.
- Customers or guests might not indicate to whom or to which department they wish the tip or gratuity to be left to.

If an employer volunteers to manage the distribution procedure, it would be appropriate for a clear policy to be available to relevant staff as part of their employment contract. It is common in hotels that tips are pooled amongst the team, and occasionally management, depending on the situation. For example, a guest may instruct that a tip is given to a particular employee as an acknowledgement of a job well done; the employee may be a member of the management team.

The Tronc system of distributing tips was previously in widespread use in the hospitality sector but has now been largely eliminated. Tronc schemes are fraught with difficulties and should under no circumstances be mandatory on the employer.

Criminal sanctions for alleged non-compliance are totally unnecessary.

The Oireachtas has a role in ensuring that employment legislation does not impose an unfair burden on employers and in particular does not start to

introduce criminal sanctions as a default position. (we do understand that the area of Health and Safety should be regarded differently).

However, it is entirely excessive and disproportionate to make non-compliance with employment legislation a criminal offence and, in particular, in an area where, for the most part, employers are reluctant to become involved. If an employee has an issue with inappropriate or unlawful withholding of tips or gratuities by an employer who is involved in the distribution of tips or gratuities they could simply bring a claim under the Payment of Wages Act 1991, as may be amended, to the WRC.

Summary

We fully support the payment of all tips and gratuities to staff. However, we are strongly opposed to any legislation that:

1. Imposes any obligation on Employers to be required to manage the distribution of tips and gratuities.
2. Seeks to impose a criminal sanction on an employer given the voluntary nature of tips and gratuities, and the potential for injustice based on speculation as to what might have been the customer's intentions.
3. Does not properly differentiate between a mandatory charge for service on the one hand and voluntary tips and gratuities on the other.

Finally, thank you for the opportunity to make this submission to the Joint Committee on Employment Affairs and Social Protection. We would welcome an opportunity to make further submissions on this matter in the future based on the detail of any Bill that emerges.