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**An Bille um Íoc Pá (Leasú) (Séisíní agus Aiscí), 2022**  
**Payment of Wages (Amendment) (Tips and Gratuities)**  
**Bill 2022**

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*Meabhrán Míniúcháin agus Airgeadais*  
*Explanatory and Financial Memorandum*

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

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Purpose of the Bill**

The purpose of this Bill is to:

- (a) provide clarity on the meaning of tips, gratuities and mandatory service charges;
- (b) place tips and gratuities, but not mandatory service charges, outside the scope of a person's contractual wages;
- (c) oblige employers to display prominently their policy on the distribution of tips;
- (d) oblige employers to distribute fairly and in a transparent manner, tips that are received in electronic form i.e. through debit or credit cards;
- (e) otherwise leave the status quo in relation to mandatory service charges forming part of the revenue of a business.

**Provisions of the Bill**

*Section 1* provides for definitions used within the Act.

*Section 2* provides for the insertion in the Payment of Wages Act 1991 of new definitions for tips, gratuities and mandatory service charges

*Section 3* provides for the insertion in the Payment of Wages Act 1991 of new sections 4A to 4D.

**4A** relates to the Minister making regulations to prescribe the employers or class of employers to which sections 4B to 4D of the Act will apply. These sections are explained below. It also provides for the Minister to be able to prescribe by regulation an employer or a class of employers, to which sections 4B to 4D do not apply.

**4B** provides for the following matters:

- Employers are required to distribute fairly and in a transparent manner, tips that are received in electronic form i.e. through debit or credit cards.
- Employers may not retain any share of tips or gratuities received by the employer electronically, unless such retention is required or permitted by this Act, or only 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.

- In considering a complaint under Part 4 of the Workplace Relations Act 2015 regarding whether a distribution of tips and gratuities to an employee is fair, an adjudication officer of the Workplace Relations Commission 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 tip or gratuity was made;
  - (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 a service to customers;
  - (f) whether the employee was consulted in relation to the manner of distribution;
  - (g) whether there is an agreement, whether formal or informal, between the employer and the employee providing for the manner in which tips and gratuities are to be distributed.
- To aid transparency in the distribution of tips, an employer must no later than 10 days from the date on which a distribution of tips and gratuities is made, give to an employee a statement in writing specifying the total amount of tips and gratuities distributed by the employer for the period to which the statement relates, and the amount of tips and gratuities distributed to the employee to whom the statement is provided.
- An employer shall, before establishing or making a material change to its policy on the manner in which tips or gratuities will be distributed among employees, or on the way in which mandatory service charges will be treated, consult with those employees.

**4C** provides that an employer cannot make a deduction from an employee's wages in respect of tips or gratuities made to, or left for, an employee, or make a deduction from an employee's tips or other gratuities other than—

- (i) as required by this Act, by any statute or by any instrument made under statute, or
- (ii) to the extent required in order to meet costs directly arising from providing electronic modes of payment for tips.

**4D** provides for an employer to display a 'Tips and Gratuities Notice' stating whether or not tips or gratuities are distributed to and amongst employees, the manner in which they are distributed and the amounts so distributed, and also whether services charges, or any portion of them, are distributed to and amongst employees, and if so, the manner in which they are distributed and the amounts so distributed. The Minister may by regulations prescribe:

- (a) the particulars of the information that shall be contained in a tips and gratuities notice, and any
- (b) further or additional information relating to tips and gratuities or mandatory service charges that shall be contained in a tips and gratuities notice,

- (c) the manner in which, or particular locations at which (including on a website or other online digital platform hosted by the employer, or at the place of business at which employees perform their work or service), a tips and gratuities notice shall be displayed.

**4E** provides for prescribed persons (e.g., businesses that contract with platform workers who are not direct employees but whose work typically attracts tips and gratuities) to display a ‘Contract Workers Tips and Gratuities Notice’ stating whether or not tips or gratuities are distributed to and amongst ‘contract workers’, the manner in which they are distributed and the amounts so distributed, and also whether services charges, or any portion of them, are distributed to and amongst ‘contract workers’, and if so, the manner in which they are distributed and the amounts so distributed. The Minister may by regulations prescribe, either generally or in relation to particular persons to whom this section applies–

- (a) the particulars of the information that shall be contained in a tips and gratuities notice, and any
- (b) further or additional information relating to tips and gratuities or mandatory service charges that shall be contained in a tips and gratuities notice,
- (c) the manner in which, or particular locations at which (including on a website or other online digital platform hosted by the employer, or at the place of business at which employees perform their work or service), a tips and gratuities notice shall be displayed.

“**Contract worker**” is defined as a natural person who carries out work other than as an employee, including on a contract for service, for a person to whom this section applies.

*Section 4* provides for amendments to section 6 of the Payment of Wages Act 1991, in subsection (1), by the substitution of “section 4C or section 5” for “section 5”. This will provide for an adjudication officer of the Workplace Relations Commission (WRC) to direct an employer to repay any unlawful deduction of tips or gratuities, arising from a complaint being made to the WRC.

*Section 5* provides for amendments to section 3 of the Terms of Employment (Information) Act 1994, in subsection (1A) to add a new subsection (g). This means that a statement regarding the employer’s policy on the manner in which tips or gratuities and mandatory service charges are treated will become part of the core terms that a new employee is to be furnished with within 5 days of commencing employment.

*Sections 6, 7 and 8* deal with enforcement and compliance issues and provide for the relevant amendments to be made to the Workplace Relations Act 2015. This enables and authorises the Workplace Relations Commission (WRC) to carry out inspections and to take complaints regarding compliance with the new requirements set out in this Act.

*Section 9* relates to the short title, commencement, and collective citation of the Act. This Act may be cited as the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022. The Act shall come into operation on such day or days as the Minister for Enterprise, Trade and Employment may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**Financial Implications**

There will be no cost to the Exchequer. The Bill contains some implications for inspection and compliance work of the Workplace Relations Commission (WRC). However, these will be accommodated within the annual budget provisions for the WRC. There are no direct costs that will be imposed on businesses but there may be some minor administrative costs to industry with employers having to display their policy towards tips and gratuities and provide a statement to workers when a payment is being made.

*An Roinn Fiontar, Trádála agus Fostaíochta,  
Eanáir, 2022.*