



Employment Rights Act 1996

1996 CHAPTER 18

[^{F1}PART 2B

TIPS, GRATUITIES AND SERVICE CHARGES

Textual Amendments

- F1** Part 2B inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023](#) (c. 13), [ss. 1, 14\(2\)](#); S.I. 2023/876, reg. 3(a)

Requirement to deal with tips, gratuities and service charges

27C Qualifying tips, gratuities and service charges

- (1) This Part makes provision for—
- (a) how employers must deal with qualifying tips, gratuities and service charges, and
 - (b) the Secretary of State to issue a code of practice to promote fairness and transparency in relation to the distribution of qualifying tips, gratuities and service charges.
- (2) In this Part “qualifying tips, gratuities and service charges” means—
- (a) employer-received tips, and
 - (b) worker-received tips which—
 - (i) are subject to employer control, or
 - (ii) are connected with any other worker-received tips which are subject to employer control.
- (3) An “employer-received tip” is an amount paid by a customer of an employer by way of a tip, gratuity or service charge (however described) which—
- (a) is received upon its payment or subsequently by the employer or an associated person, or

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) is received upon its payment by a person under a payment arrangement made between the employer and that person.
- (4) A “worker-received tip” is an amount paid by a customer of an employer by way of a tip, gratuity or service charge (however described) which—
 - (a) is received upon its payment by a worker of the employer, and
 - (b) is not subsequently received by the employer or an associated person.
- (5) For the purposes of subsection (2)(b)—
 - (a) a worker-received tip is subject to employer control if the employer or an associated person exercises control or significant influence over the allocation of the tip;
 - (b) a worker-received tip (“tip A”) is connected with another worker-received tip which is subject to employer control (“tip B”) if—
 - (i) both tips are paid at, or are otherwise attributable to, the same place of business, and
 - (ii) tip A is paid later in the week, or in the week following the week, in which tip B is paid.
- (6) In this section the “amount paid by a customer of an employer by way of a tip, gratuity or service charge” means the actual amount paid by the customer (and accordingly any deductions from the amount paid, whether deducted by the employer or any other person, are to be disregarded when determining the amount paid by the customer).
- (7) An amount paid by a customer of an employer is not paid by way of a tip, gratuity or service charge to the extent that the amount represents payment of value added tax.
- (8) If an amount is not paid in money, it can be a qualifying tip, gratuity or service charge only if it is paid in the form of a voucher, stamp, token or similar item which is—
 - (a) of a fixed value expressed in monetary terms, and
 - (b) capable of being exchanged (whether on its own or together with other vouchers, stamps, tokens or items, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things).
- (9) In this section—
 - “payment arrangement” means an arrangement between an employer and another person under which payments made by customers of the employer are to be received by the other person instead of the employer;
 - “week” means any period of seven days beginning with a Monday (and ending with a Sunday).]

[^{F2}27D How tips etc must be dealt with

- (1) An employer must ensure that the total amount of the qualifying tips, gratuities and service charges paid at, or otherwise attributable to, a place of business of the employer is allocated fairly between workers of the employer at that place of business.
- (2) Where a worker is allocated an amount of employer-received tips in accordance with subsection (1), that amount is payable to the worker by the employer.

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) In determining what would be a fair allocation of qualifying tips, gratuities and service charges under this section or section 27E (non-public places of business), regard must be had to the relevant provisions of any code of practice issued under this Part.
- (4) See also sections 27E (non-public places of business) and 27F (independent trons).

Textual Amendments

F2 Ss. 27D, 27E inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023 \(c. 13\)](#), ss. 2, 14(2); S.I. 2023/876, reg. 3(a)

27E Non-public places of business

- (1) This section applies where—
 - (a) qualifying tips, gratuities and service charges are paid at, or are otherwise attributable to, a non-public place of business of an employer (the “non-public tips”), and
 - (b) the employer also has one or more public places of business.
- (2) The employer may comply with the requirement in section 27D(1) to ensure that the total amount of the non-public tips is allocated fairly between workers of the employer at the non-public place of business by instead ensuring that the total amount of the non-public tips is allocated fairly between both—
 - (a) workers of the employer at the non-public place of business, and
 - (b) workers of the employer at one or more public places of business of the employer.
- (3) In this section—

“non-public place of business” means a place of business that is not a public place of business;

“public place of business” means a place of business where interaction between—

 - (a) customers of the employer, and
 - (b) workers of the employer,

occurs wholly or mainly face-to-face.]

Textual Amendments

F2 Ss. 27D, 27E inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023 \(c. 13\)](#), ss. 2, 14(2); S.I. 2023/876, reg. 3(a)

[^{F3}27F Independent trons

- (1) In this section “relevant tips” means the qualifying tips, gratuities and service charges that—
 - (a) are paid at, or are otherwise attributable to, a place of business of an employer, and
 - (b) are paid during a reference period.
- (2) Where—

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) the employer makes arrangements for the total amount of the relevant tips to be allocated between workers of the employer at the place of business by an independent tronc operator, and
 - (b) it is fair for the employer to make those arrangements,
- the employer is to be treated as having ensured that the total amount of the relevant tips is allocated fairly between workers of the employer at the place of business in accordance with section [27D\(1\)](#).
- (3) Where—
- (a) the employer makes arrangements for a part of the total amount of the relevant tips to be allocated between workers of the employer at the place of business by an independent tronc operator, and
 - (b) it is fair for the employer to make those arrangements,
- the employer is to be treated as having ensured that that part of the total amount of the relevant tips is allocated fairly between workers of the employer at the place of business in accordance with section [27D\(1\)](#).
- (4) In determining whether it would be fair for an employer to make the arrangements mentioned in subsection (2) or (3), regard must be had to the relevant provisions of any code of practice issued under this Part.
- (5) Section [27D\(2\)](#) does not apply to an amount which—
- (a) by virtue of subsection (2) or (3), is treated as having been allocated fairly between workers, and
 - (b) is payable to the worker by the independent tronc operator.
- (6) For the purposes of this section “an independent tronc operator” is a person who the employer reasonably considers to be operating, or intending to operate, independently of the employer, arrangements under which—
- (a) the total amount of qualifying tips, gratuities and service charges subject to the arrangements is allocated between workers of the employer at the relevant place of business by the person,
 - (b) such allocated qualifying tips, gratuities and service charges are payable to such workers by the person or by the employer (or partly by the person and partly by the employer),
 - (c) amounts payable to workers by the person in accordance with paragraph (b) are not subject to unauthorised deductions by the person, and
 - (d) all payments made to workers in accordance with paragraph (b) are payments to which paragraph 5(1) of Part 10 of Schedule 3 to the Social Security (Contributions) Regulations 2001 ([S.I. 2001/1004](#)) (payments disregarded in the calculation of earnings)—
 - (i) applies by virtue of the payments meeting the condition in paragraph 5(3) of that Part, or
 - (ii) would apply by virtue of the payments meeting the condition in paragraph 5(3) of that Part if the modifications in subsection (7) were made to paragraph 5 of that Part.
- (7) The modifications are—
- (a) each reference to a “secondary contributor” is to be read as a reference to an “employer”;
 - (b) each reference to an “earner” is to be read as a reference to a “worker”.

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (8) The Secretary of State may by regulations—
- (a) amend the definition of “independent tronc operator” in this section in consequence of the making of social security contributions regulations, and
 - (b) consequentially amend any other provision of this Part.
- (9) In this section—
- “reference period” means a period of at least one day, as determined by the employer from time to time;
- “social security contributions regulations” means any regulations making provision related to social security contributions of employers or workers;
- “unauthorised deduction” means a deduction that is not required or authorised to be made by virtue of a statutory provision.]

Textual Amendments

- F3** S. 27F inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023](#) (c. 13), **ss. 3, 14(2)**; S.I. 2023/876, reg. 3(a)

[^{F4}27G] When tips etc must be dealt with

The employer must—

- (a) ensure that a qualifying tip, gratuity or service charge is allocated in accordance with section 27D(1), and
- (b) make any payment that the employer is required to make to a worker under section 27D(2) as a result of that allocation,

no later than the end of the month following the month in which the tip, gratuity or service charge was paid by the customer.]

Textual Amendments

- F4** S. 27G inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023](#) (c. 13), **ss. 4, 14(2)**; S.I. 2023/876, reg. 3(a)

[^{F5}27H] Agency workers

- (1) In this Part an “eligible agency worker” is an individual—
- (a) who is supplied by a person (the “agent”) to do work for another person (the “principal”) under a contract or other arrangements made between the agent and the principal, but
 - (b) who is not, as respects that work, a worker of the principal because of the absence of a worker’s contract between the individual and the principal, and
 - (c) who is not a party to a contract under which the individual undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.
- (2) Where an eligible agency worker does work for the principal at a place of business of the principal, this Part applies as if—
- (a) the eligible agency worker were a worker of the principal, and

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) the principal were the employer of the eligible agency worker.
- (3) Where an amount is payable to an eligible agency worker under section 27D(2)—
 - (a) the amount may instead be paid to the agent (within the period specified in section 27G);
 - (b) the employer must not make any unauthorised deductions from the amount (whether or not the amount is paid to the agent under paragraph (a)).
- (4) Where an amount is paid to the agent under subsection (3)—
 - (a) the amount becomes payable to the eligible agency worker by the agent before the end of the month after the month in which the agent is paid the amount under subsection (3), and
 - (b) the agent must not make any unauthorised deductions from the amount.
- (5) In this section “unauthorised deduction” means a deduction that is not required or authorised to be made by virtue of a statutory provision.
- (6) In this Part a reference to an eligible agency worker includes, where the context requires, a reference to a former eligible agency worker.]

Textual Amendments

- F5** S. 27H inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023](#) (c. 13), **ss. 5, 14(2)**; S.I. 2023/876, reg. 3(a)

F⁶Information

Textual Amendments

- F6** Ss. 27I, 27J and cross-heading inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023](#) (c. 13), **ss. 6, 14(2)**; S.I. 2023/876, reg. 3(a)

271 Written policy

- (1) Where qualifying tips, gratuities and service charges are paid at, or are otherwise attributable to, a place of business of an employer on more than an occasional and exceptional basis, the employer must have a written policy on dealing with qualifying tips, gratuities and service charges for the place of business.
- (2) A written policy for a place of business must include the following information—
 - (a) whether the employer requires or encourages customers to pay tips, gratuities and service charges at the place of business;
 - (b) how the employer ensures that all qualifying tips, gratuities and service charges paid at, or otherwise attributable to, the place of business are dealt with in accordance with this Part, including how the employer allocates qualifying tips, gratuities and service charges between workers at the place of business.
- (3) Where an employer is required by this section to have a written policy for a place of business, the employer must make the written policy available to all workers of the employer at the place of business.

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) Subsection (5) applies in a case where—
 - (a) an employer is not required by this section to have a written policy for a place of business, but
 - (b) the employer would be required by this section to have such a written policy if worker-received tips paid at, or otherwise attributable to, the place of business were qualifying tips, gratuities and service charges.
- (5) In that case, the employer must make the following information available to all workers of the employer at the place of business—
 - (a) the fact that the employer is not required by this section to have a written policy for the place of business, and
 - (b) the reasons why the employer is not required by this section to have such a written policy.
- (6) Where—
 - (a) an employer makes a written policy available to workers at a place of business under this section, and
 - (b) the employer subsequently amends that policy,
the employer must make the amended version of the policy available to all workers of the employer at the place of business.

27J Records

- (1) Where qualifying tips, gratuities and service charges are paid at, or are otherwise attributable to, a place of business of an employer on more than an occasional and exceptional basis, the employer must—
 - (a) create a record of how every qualifying tip, gratuity and service charge paid at, or otherwise attributable to, the place of business has been dealt with in accordance with this Part, and
 - (b) maintain that record for a period of three years beginning with the date on which the qualifying tip, gratuity or service charge was paid.
- (2) The record required by subsection (1) must include—
 - (a) the amount of qualifying tips, gratuities and service charges paid at, or otherwise attributable to, the place of business;
 - (b) the amount of those qualifying tips, gratuities and service charges—
 - (i) that the employer allocated to workers of the employer at the place of business;
 - (ii) that the employer arranged to be allocated to workers of the employer at the place of business by an independent tronc operator in accordance with section 27F.
- (3) A worker of an employer may make a written request for the employer to provide the following records for a period specified in the request in relation to a place of business of the employer that the worker worked at—
 - (a) the amount of qualifying tips, gratuities and service charges paid at, or otherwise attributable to, the place of business;
 - (b) the amount of those qualifying tips, gratuities and service charges—
 - (i) that the employer allocated to the worker;

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (ii) that the employer arranged to be allocated to workers of the employer at the place of business by an independent tronc operator in accordance with section 27F.
- (4) Where—
- (a) an employer receives a request from a worker under subsection (3) for records in relation to a place of business of the employer, and
 - (b) the employer is required by this section to maintain those records,
- the employer must, within the response period, provide the worker with the requested records in respect of the period specified in the request or a substantially similar period.
- (5) Subsection (6) applies in a case where—
- (a) an employer receives a request from a worker under subsection (3) for records in relation to a place of business of the employer,
 - (b) the employer is not required by this section to maintain those records, but
 - (c) the employer would be required by this section to maintain those records if worker-received tips paid at, or otherwise attributable to, the place of business were qualifying tips, gratuities and service charges.
- (6) In that case, the employer must, within the response period, notify the worker—
- (a) that the employer is not required by this section to maintain the requested records, and
 - (b) of the reasons why the employer is not required by this section to maintain those records.
- (7) A worker may request records under this section in respect of a period only if—
- (a) the period is a period of one month or two or more consecutive months,
 - (b) the period begins no more than three years before the date of the request,
 - (c) the period ends before the date of the request, and
 - (d) the worker worked for the employer at any time during each month that forms part of the request.
- (8) A worker may not make more than one request for records under this section in any three month period.
- (9) Except as provided by subsection (10), a disclosure of information required by subsection (4) does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (10) Subsection (4) does not require a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, the duty imposed by that subsection is to be taken into account).
- (11) In this section—
- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act);
- “date of the request” means the date that the request is received by the employer;
- “response period” means the period of four weeks beginning with the date of the request.]

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F7}Enforcement

Textual Amendments

- F7** Ss. 27K-27M and cross-heading inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023 \(c. 13\)](#), ss. 7, 14(2); S.I. 2023/876, reg. 3(a)

27K Complaints to employment tribunal about tips etc

- (1) A worker may present a complaint to an employment tribunal that the worker's employer has failed to comply with—
 - (a) section 27D (how tips etc must be dealt with), or
 - (b) section 27G (when tips etc must be dealt with),in relation to the worker.
- (2) An eligible agency worker may also present a complaint to an employment tribunal that an agent has failed to comply with the requirement to make a payment to the eligible agency worker that the agent was required to make under section 27H(4).
- (3) An employment tribunal must not consider a complaint under this section unless it is presented before the end of the period of twelve months beginning with the date of the failure to comply.
- (4) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of twelve months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
- (5) If a complaint is presented under this section in respect of a series of failures to comply, the reference in subsection (3) to the date of the failure to comply is to the date of the last failure in the series.
- (6) An eligible agency worker may present a complaint under subsection (2) whether or not the eligible agency worker also presents a complaint under subsection (1).
- (7) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3).

27L Determination of complaints about tips etc

- (1) If an employment tribunal finds a complaint under section 27K well founded—
 - (a) it must make a declaration to that effect, and
 - (b) it may—
 - (i) in the case of a complaint under section 27K(1), make an order requiring the employer to deal with qualifying tips, gratuities and service charges that were paid at, or were otherwise attributable to, a place of business of the employer in accordance with this Part;
 - (ii) in the case of a complaint under section 27K(2), make an order requiring the agent to make a payment to the eligible agency worker of the amount that the agent was required under section 27H to pay to the eligible agency worker.
- (2) An order made under subsection (1)(b)(i) may in particular—

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) require the employer to revise an allocation made by the employer under section 27D;
 - (b) make a recommendation to the employer regarding that allocation;
 - (c) require the employer to make a payment to one or more workers of the employer in accordance with this Part (including a worker who is not the complainant).
- (3) A recommendation made under subsection (2)(b) is not binding on an employer, but is to be admissible in evidence in proceedings before an employment tribunal; and any provision of the recommendation which appears to the tribunal to be relevant to any question arising in the proceedings is to be taken into account in determining that question.
- (4) An order made under subsection (1)(b)(i) following a complaint presented by a worker does not prevent a different worker from presenting a complaint under this Part in relation to the same employer or the same qualifying tips, gratuities and service charges.

27M Compensation: dealing with tips etc

- (1) If an employment tribunal makes a declaration under section 27L(1)(a), it may order the employer or agent (as the case may be) to pay to the complainant such amount, not exceeding £5,000, as the tribunal considers appropriate in all the circumstances to compensate the complainant for any financial loss sustained by the complainant which is attributable to the matter complained of.
- (2) The tribunal may make an order under this section whether or not an order under section 27L(1)(b) has been made.]

[^{F8}27N Complaints to employment tribunal about information

- (1) A worker may present a complaint to an employment tribunal that the worker's employer has failed to comply with a requirement in section 27I (written policy) or 27J (records).
- (2) An employment tribunal must not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date of the failure to comply.
- (3) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
- (4) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

Textual Amendments

F8 Ss. 27N, 27O inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023 \(c. 13\)](#), ss. 8, 14(2); S.I. 2023/876, reg. 3(a)

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

27O Determination of complaints about information

- (1) If an employment tribunal finds a complaint under section 27N well founded—
 - (a) it must make a declaration to that effect, and
 - (b) it may make an order requiring the employer to comply with the requirement in accordance with section 27I or 27J.
- (2) If an employment tribunal makes a declaration under subsection (1)(a), it may order the employer to pay to the worker such amount, not exceeding £5,000, as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by the worker which is attributable to the matter complained of.
- (3) The tribunal may make an order under subsection (2) whether or not an order referred to in subsection (1)(b) has been made.]

Textual Amendments

- F8** Ss. 27N, 27O inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023 \(c. 13\)](#), [ss. 8, 14\(2\)](#); S.I. 2023/876, [reg. 3\(a\)](#)

^{F9}Code of practice about tips etc

Textual Amendments

- F9** Ss. 27P-27T and cross-heading inserted (31.7.2023) by [Employment \(Allocation of Tips\) Act 2023 \(c. 13\)](#), [ss. 9, 14\(2\)](#); S.I. 2023/876, [reg. 3\(b\)](#)

27P Issue of code of practice

- (1) The Secretary of State may issue a code of practice under section 27Q for the purpose of promoting fairness and transparency in the distribution of qualifying tips, gratuities and service charges.
- (2) The Secretary of State may from time to time revise the whole or any part of a code of practice and issue that revised code of practice under section 27Q.

27Q Procedure for issue of code of practice

- (1) If the Secretary of State proposes to issue a code of practice under this section the Secretary of State must—
 - (a) consult ACAS;
 - (b) publish a draft of the code of practice;
 - (c) consider any representations made about the draft code of practice and modify the draft code of practice accordingly.
- (2) If the Secretary of State decides to proceed with the draft code of practice, the Secretary of State must—
 - (a) lay it before both Houses of Parliament, and
 - (b) if it is approved by resolution of each House, issue the code of practice in the form of the draft.

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) A code of practice issued under this section comes into effect on such day as the Secretary of State may by regulations appoint.

27R Consequential revision of code of practice

- (1) A code of practice issued under section 27Q may be revised by the Secretary of State in accordance with this section for the purpose of bringing it into conformity with subsequent statutory provisions by the making of consequential amendments and the omission of obsolete passages.
- (2) In this section “subsequent statutory provisions” means provisions made by or under an Act of Parliament and coming into force after the code of practice was issued.
- (3) If the Secretary of State proposes to revise a code of practice under this section, the Secretary of State must lay a draft of the revised code of practice before each House of Parliament.
- (4) If within the period of 40 days beginning with the day on which the draft is laid before Parliament, or, if copies are laid before the two Houses on different days, with the later of the two days, either House so resolves, no further proceedings are to be taken thereon, but without prejudice to the laying before Parliament of a new draft.
- (5) In reckoning the period of 40 days no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (6) If no such resolution is passed, the Secretary of State must issue the code of practice in the form of the draft and it comes into effect on such day as the Secretary of State may by regulations appoint.

27S Revocation of code of practice

A code of practice issued under this Part may be revoked by the Secretary of State by regulations.

27T Failure to comply with code of practice

- (1) In proceedings before an employment tribunal, a code of practice issued under this Part is to be admissible in evidence, and any provision of the code of practice which appears to the tribunal to be relevant to any question arising in the proceedings is to be taken into account in determining that question.
- (2) A failure on the part of an employer to observe any provision of a code of practice issued under this Part does not of itself render the employer liable to any proceedings.]

F¹⁰General

Textual Amendments

F10 Ss. 27U-27Y and cross-heading inserted (31.7.2023 for specified purposes) by [Employment \(Allocation of Tips\) Act 2023 \(c. 13\)](#), ss. 10, 14(2); S.I. 2023/876, reg. 3(c)

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

27U No restitution claims by employer

- (1) This section applies where—
 - (a) a worker is allocated an amount of qualifying tips, gratuities and service charges in accordance with section 27D(1) (the “original allocation”),
 - (b) the employment tribunal makes an order under section 27L(1)(b)(i) that has the effect of requiring the employer to revise that allocation,
 - (c) the employer subsequently revises the amount of qualifying tips, gratuities and service charges allocated to the worker (the “revised allocation”), and
 - (d) the amount of the revised allocation is less than the amount of the original allocation.
- (2) The difference between the amount of the revised allocation and the amount of the original allocation is not payable by the worker to the employer (and accordingly the employer may not bring proceedings in a court or tribunal to recover from the worker or an agent (as the case may be) the difference between such amounts based wholly or partly on the employment tribunal order).
- (3) For the meaning of “agent”, see section 27H.

27V Relationship with contractual rights

- (1) An entitlement of a worker to be allocated qualifying tips, gratuities and service charges under this Part does not affect any contractual right of the worker to receive an amount representing qualifying tips, gratuities and service charges under a contract of employment (“contractual tips”).
- (2) But—
 - (a) any contractual tips paid to a worker by an employer of that worker in respect of any period are to go towards discharging any liability of that employer to allocate qualifying tips, gratuities and service charges to that worker in respect of that period under this Part, and
 - (b) any qualifying tips, gratuities and service charges allocated by an employer to a worker under this Part in respect of any period are to go towards discharging any liability of that employer to pay contractual tips to that worker in respect of that period.

27W Restrictions on contracting out of this Part

- (1) A prohibited reimbursement provision in an agreement between an employer and a worker (whether in a contract of employment or not) is void.
- (2) A provision in an agreement is a “reimbursement provision” if it purports—
 - (a) to require the worker to make a payment to the employer, or
 - (b) to reduce any part of the wages payable to the worker by the employer.
- (3) A reimbursement provision is “prohibited” if there is a relationship between—
 - (a) the payment or reduction, or the amount of the payment or reduction, under the reimbursement provision, and
 - (b) either—
 - (i) the worker being allocated qualifying tips, gratuities and service charges, or

Status: Point in time view as at 31/07/2023.

Changes to legislation: Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (ii) the worker receiving worker-received tips that are not qualifying tips, gratuities and service charges.
- (4) The circumstances in which there is a relationship of the kind mentioned in subsection (3) include circumstances where—
- (a) the possibility of the worker being allocated qualifying tips, gratuities and service charges,
 - (b) the amount of qualifying tips, gratuities and service charges to be allocated to the worker,
 - (c) the possibility of the worker receiving worker-received tips that are not qualifying tips, gratuities and service charges, or
 - (d) the amount of worker-received tips that are not qualifying tips, gratuities and service charges to be received by the worker,
- is wholly or partly dependent on the reimbursement provision having been agreed.
- (5) This section is without prejudice to section 203 (restrictions on contracting out).

27X Interpretation

- (1) In this Part—
- “customer”, in relation to an employer, includes any person who is provided with services by the employer;
 - “place of business”, in relation to an employer, includes any location where the activities of the employer’s business are carried out (whether on a permanent or temporary basis).
- (2) Where a qualifying tip, gratuity or service charge is—
- (a) attributable to a place of business, but
 - (b) paid at a different place of business,
- this Part applies to the qualifying tip, gratuity or service charge only in relation to the place of business to which it is attributable.
- (3) Where an employer-received tip or a worker-received tip is neither paid at, nor otherwise attributable to, a place of business of the employer, this Part applies as if—
- (a) the tip were attributable to a place of business of the employer, and
 - (b) all workers of the employer were at that place of business (whether or not those workers were also at any other place of business of the employer).
- (4) Where subsection (3) applies in relation to two or more employer-received tips or worker-received tips, all such tips are attributable (in accordance with that subsection) to the same place of business of the employer.
- (5) For the purposes of this Part an employer and a person are to be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control, or
 - (b) both are companies of which a third person (directly or indirectly) has control,
- and “associated person” is to be construed accordingly.

27Y Application

This Part applies in respect of tips, gratuities and service charges paid by customers on or after the date on which section 27D comes into force.]

Status:

Point in time view as at 31/07/2023.

Changes to legislation:

Employment Rights Act 1996, PART 2B is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.