



# Employment (Allocation of Tips) Act 2023

## 2023 CHAPTER 13

### 10 General

After section 27T of the Employment Rights Act 1996 insert—

*“General*

#### **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
    - (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.”