

Understanding the new

TIPPING LEGISLATION

and what it could mean for your business as it
currently stands



WHAT IS THE EMPLOYMENT (ALLOCATION OF TIPS) ACT?

The purpose of the new legislation follows **two main themes**:

- to ensure 100% of gratuities (tips and service charges) left by customers reach workers
- that the allocation of those monies is dealt with fairly.

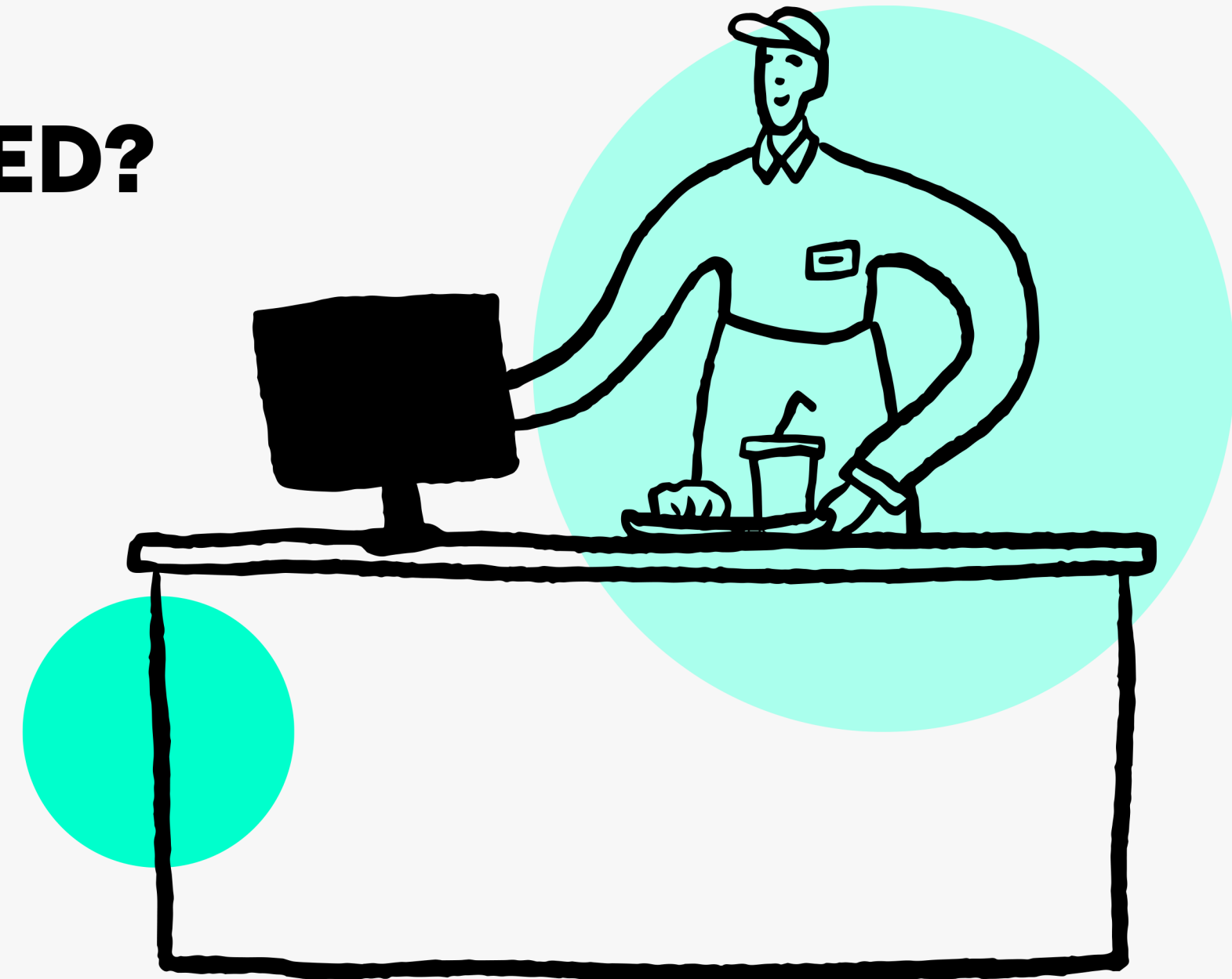
The Act primarily covers “employer-received” tips (non-cash gratuities), left by card or as a discretionary service charge over which the employer has initial control.

But, cash tips that an employer has control or direction over, are also caught.

All of the information that follows is based on the Act as it received Royal Assent on 2 May 2023



HOW IS THE ACT BE APPROACHED?



How does the Act state tips should be dealt with?

**100% OF GRATUITIES LEFT BY
THE CUSTOMER MUST BE
PASSED TO WORKERS.**

1.





How does the Act state tips should be dealt with?

**OPERATORS CANNOT MAKE OR TAKE ANY
DEDUCTIONS TO COVER ANY ADMINISTRATION
COSTS (CARD FEES, PAYROLL COSTS ETC.).**

2.

How does the Act state tips should be dealt with?

**ALL GRATUITIES PAID AT AND/OR
ATTRIBUTABLE TO A SINGLE VENUE,
MUST BE ALLOCATED AMONGST THE
WORKERS AT THAT VENUE.**

In other words, no sharing across sites!

3.

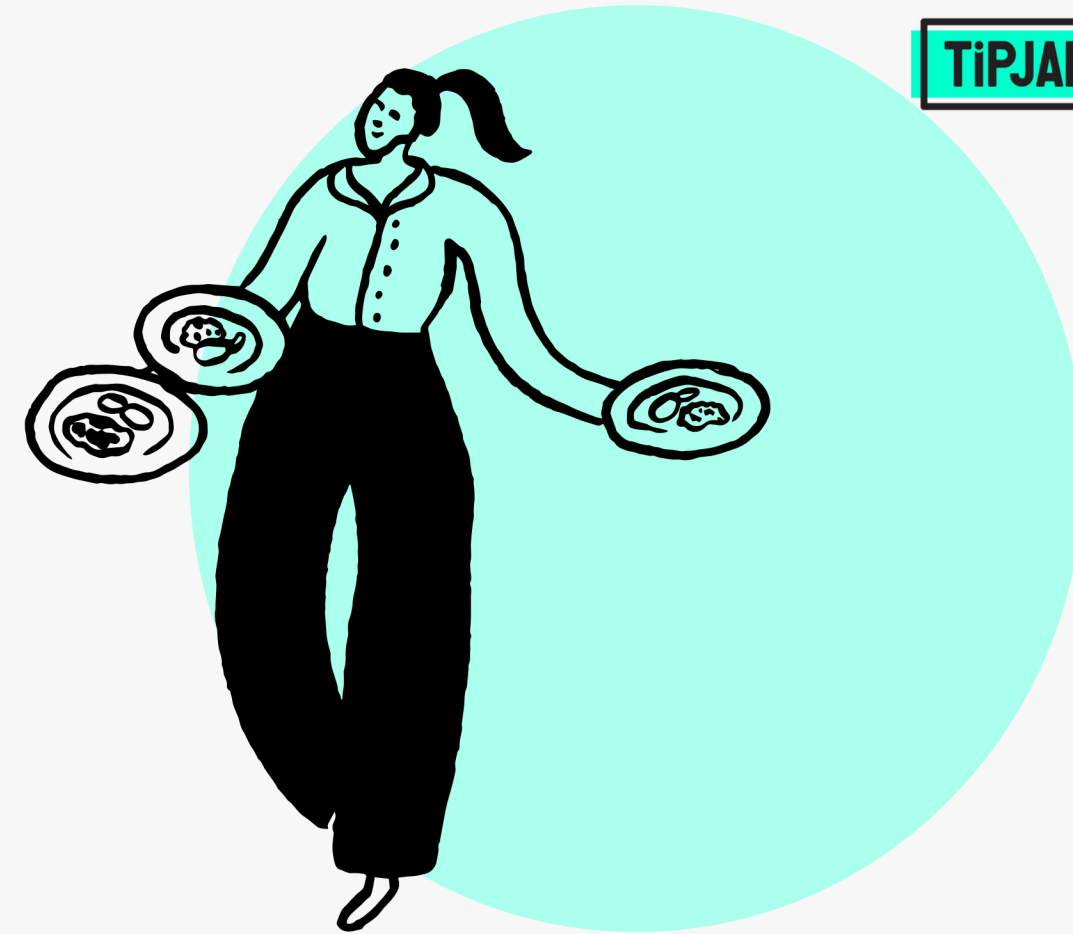




How is does the Act state tips should be dealt with?

NON-CUSTOMER-FACING WORKERS CAN RECEIVE AN ALLOCATION OF GRATUITIES FROM A SITE AS LONG AS THEIR ROLE CAN BE LINKED TO THAT SITE (EX. AREA/REGIONAL RESPONSIBILITIES).

4.



How does the Act state tips should be dealt with?

ALL GRATUITIES MUST BE FAIRLY ALLOCATED.

5.

How does the Act state tips should be dealt with?

**GRATUITIES MUST BE
ALLOCATED AND PAID TO
WORKERS NO LATER THAN
THE END OF THE MONTH
FOLLOWING THE MONTH
RECEIVED FROM THE
CUSTOMER.**



How does the Act state tips should be dealt with?

ALTHOUGH NOT A REQUIREMENT OF THE ACT, AN EMPLOYER IS EXPECTED TO “STEP IN” OR “CHALLENGE” A TRONCMASTER IF FAIRNESS IS NOT APPARENT OR THERE IS A PERCEIVED COMPLIANCE RISK.

In essence, moral good practice.





How does the Act state tips should be dealt with?

AGENCY WORKERS WILL BECOME ENTITLED TO A SHARE OF GRATUITIES IN THE SAME WAY AS EMPLOYEES. THAT SHARE CAN BE INVOICED TO THE AGENCY, (WHO WILL THEN ARRANGE ALLOCATION AMONGST THOSE WORKERS) OR PAID BY THE HOST EMPLOYER.

8.

How does the Act state tips should be dealt with?

**IT WILL BE PROHIBITED TO
NEGOTIATE WITH A WORKER TO
VARY THEIR CONTRACTUAL
SALARY/WAGES, IN RETURN FOR
A SHARE OF GRATUITIES.**



How does the Act state tips should be dealt with?

THE GOVERNMENT HAS GIVEN AN UNDERTAKING TO PROVIDE A NEW CODE OF PRACTICE NOW THE ACT IS PASSED, WHICH WILL PROVIDE PRACTICAL GUIDANCE FOCUSSED PARTICULARLY ON FAIRNESS.

This will have its own consultation period and parliamentary approval.

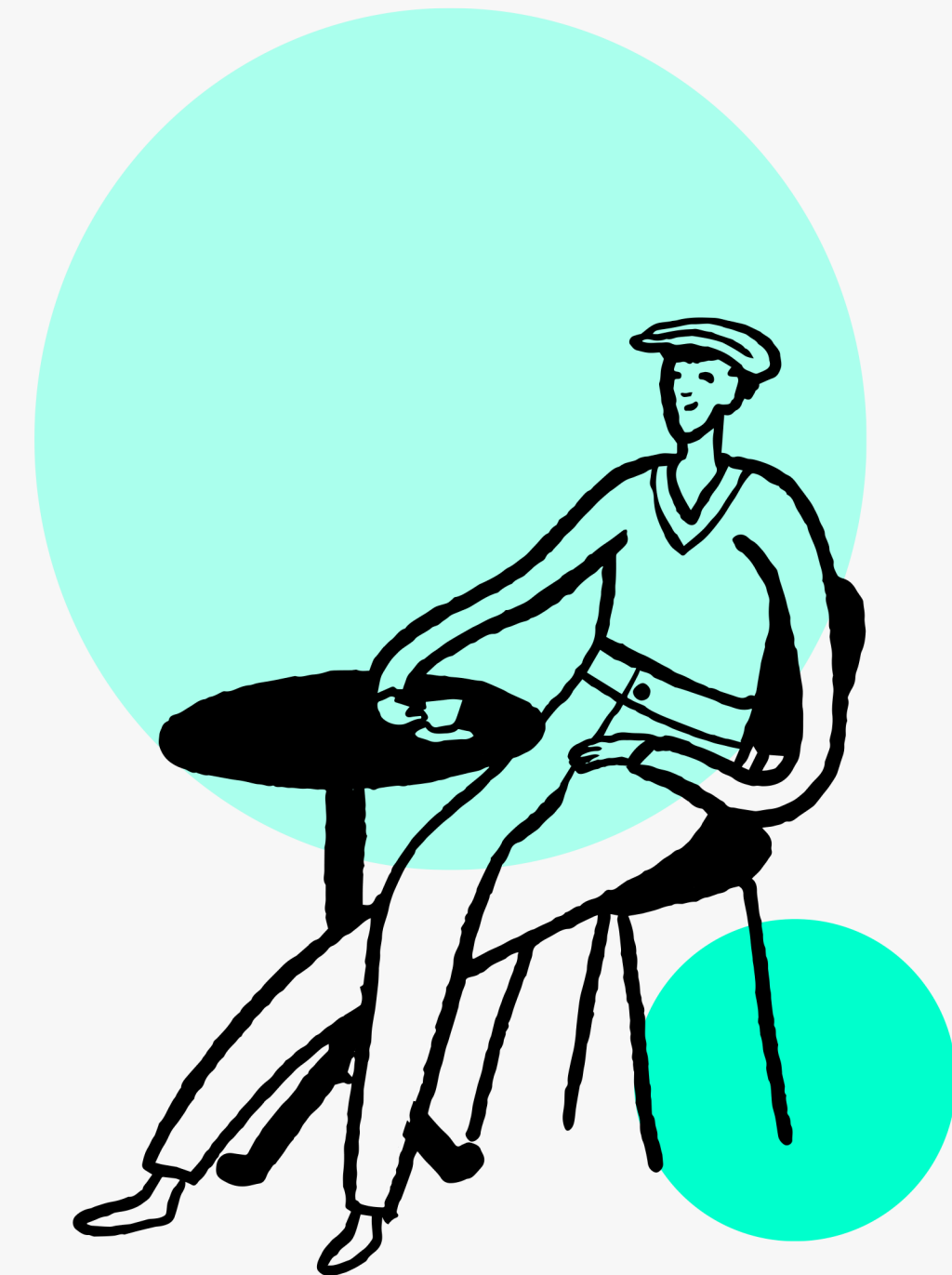
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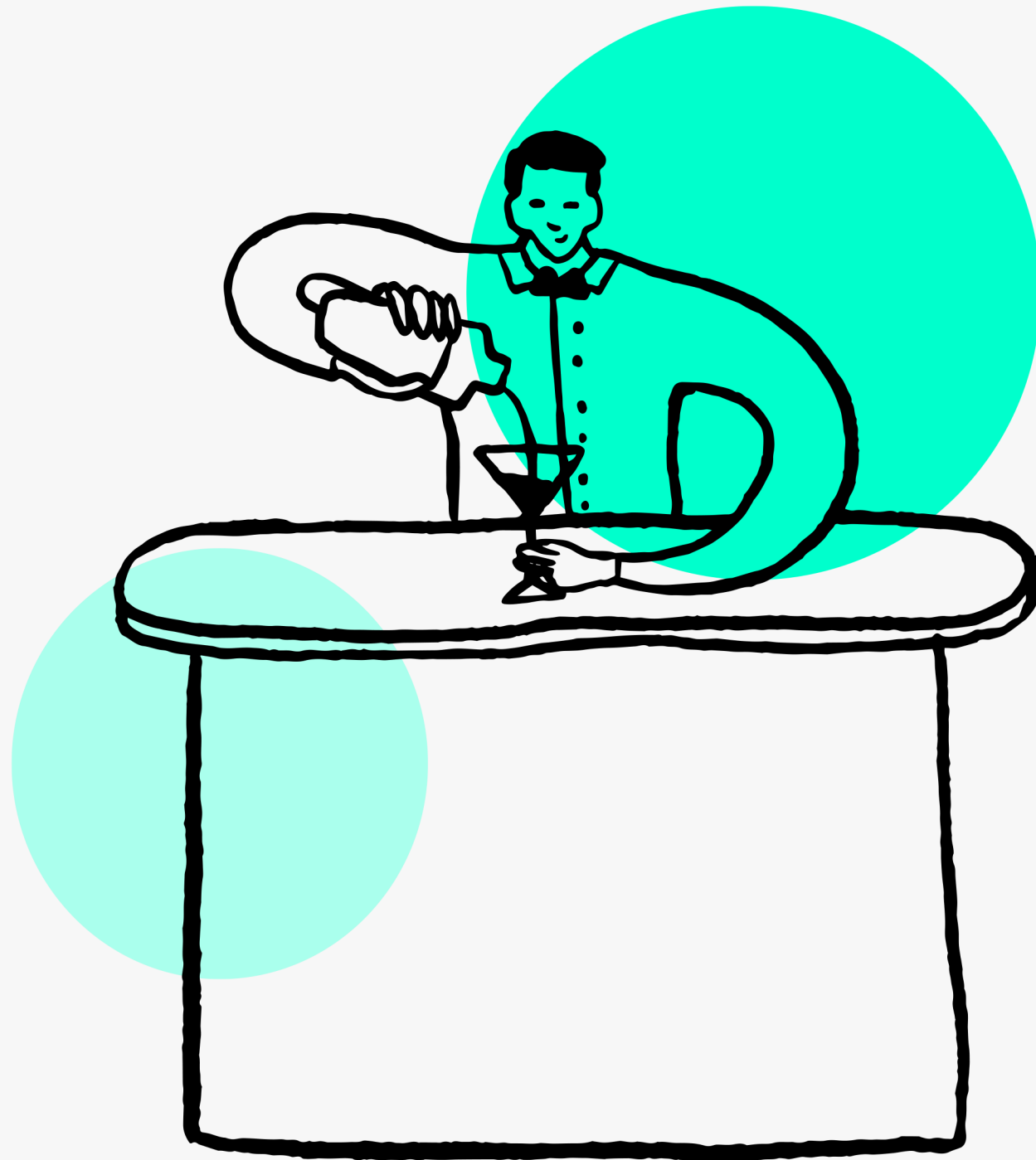


BUT, WHAT ABOUT TRONCS?

The compliance conditions of the Act are deemed “automatically met” if there is an **independent** (and compliant) tronc arrangement in place.

Independently administered means a formal tronc arrangement run by an appointed troncmaster.





POLICIES & RECORDS

A written policy which fully explains how gratuities are collected and allocated to workers, **must be maintained**. This policy must state how it meets the terms of the new legislation.

- Policies may be the responsibility of the business, the troncmaster or both, depending on how gratuities are dealt with.
- All policies must be made available to workers on request.
- Full records of qualifying gratuities received and paid out must be maintained for a 3 year period.
- Workers can request access to their record of gratuities, for one month or two consecutive months, but these months must have already passed.
- The worker must have worked during the requested months and can only make one request, per three-month period.
- A worker can ask to see records of total gratuities received by site, but is not entitled to see other personal information or other workers details (excluded under the Data Protection Act).

COMPLAINTS & ENFORCEMENT

- Workers can take complaints against their employer (in relation to employer-allocated gratuities) **to an Employment Tribunal.**
- A Tribunal can direct an employer to make good any loss found to be due to workers due to said employer not acting fairly.
- If a Tribunal were to find monies have been overpaid to a worker, an employer cannot recover this from workers.
- Workers cannot take any complaints regarding the running of a tronc to a tribunal. A troncmaster is not the workers employer, so cannot be sued.





WHAT SHOULD OPERATORS CONSIDER?

- If required, do you have a policy **that is fair and transparent?** Or, does your troncmaster have a policy that is fair and transparent?
- In both cases, does the policy cover all workers including back and front of house, agency staff etc?
- Are workers and customers aware of such policy?
- Where a tronc is in place, are you satisfied that it is set up compliantly and meets the requirements of the new Act
- Has the business historically retained amounts from the total tronc monies, before passing the net to the troncmaster?
- Have you checked that other business documentation and policies do not inadvertently undermine the compliance and efficiency of tronc arrangements (eg. references to tronc and entitlement/amounts mentioned in job adverts, contracts, offer letters, other T&Cs or Policies)?
- Does the troncmaster historically retain any amounts from the tronc, to build a reserve for later allocation?
- If you are not already operating any tronc arrangements, do you know what the NIC savings might be if you allowed a tronc to be implemented?
- How are you managing the tax risk and, where relevant, NIC compliance in relation to cash tips?

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	CURRENTLY	EMPLOYMENT (ALLOCATION OF TIPS) ACT 2023
Allocation arrangements must be fair	No requirement	All tips must be paid to workers in a fair manner
Policy documents	No requirement	Businesses (and troncmasters) to publish clear policies on tipping arrangements
Retention of tips	Employers can retain any amount of non-cash tips	100% of tips received must be paid out
Tronc arrangements	Standard structure for allocating tips	Tronc arrangements still valid
Reserve funds	Troncmaster can build up a reserve	All tips must be paid out by the end of the month following the month of collection
Agency Workers	No requirement to pay tips	Agency workers entitled to tips in same manner as workers
Pooling of tips	Can share tips across multiple sites	Tips must be allocated to workers in the site where generated (incl. non customer facing roles)
Maintain records of tips (incl. via a tronc)	Business records required to be kept for 6 years	Must be retained for 3 years
Worker request details of tips paid	No obligation to provide	Workers to be provided with personal tip statements on request. Only covers last 3 years
Dispute by workers	Workers cannot bring claims	Workers can take their employer (but not a troncmaster) to Employment Tribunal
Contracts of employment	Can vary contractual pay in exchange for tips	No such variations to employment contracts permitted
Processing costs	Employers can deduct costs (card fees, payroll)	100% of tips must be paid out. Employers must cover processing costs
Code of Practice	None	Proposed new code to be issued
National Insurance exemptions	Can apply to compliant tronc arrangements	Continues to apply to compliant tronc arrangements

CONCLUSION

The Act is not retrospective, so operators should use the time now to prepare and adjust if necessary.

The challenge for operators is how to ensure compliance with the new legislation, whilst still providing an efficient and seamless service to their customers and preserving staff morale.

At **The Tronc Advisor**, we are here to help you navigate these changes to ensure future compliance, but at the same time assist with existing arrangements to ensure tax and NICs compliance and efficiencies.





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