

## **About us**

This submission is made by Unite, the UK's leading trade union. Unite represents and organises over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Unite Hospitality is the union for hospitality workers in bars, restaurants, cafes, casinos, tourism and hotels across Britain and Ireland. We are challenging poor employment practises and unprincipled management across the industry representing thousands of our members in hundreds of employers across the country.

Our objective is to give a strong and cohesive voice to the workers in the hospitality sector, a sector where workers have not had strong trade union representation up until now. That strong cohesive voice for hospitality workers means that we must endeavour to organise our members and supporters in their workplaces. Unite Hospitality has campaigned and won for workers in the industry on a range of issue: against sexual harassment, tip scams and zero hours. Whilst winning decent wages, fair rotas and guaranteed minimum working hours.

## **Introduction**

This document sets out the Unite's response to the Department for Business and Trade's consultation on distributing tips fairly.

Unite has long campaigned for fair tips legislation and for this to include a statutory code to provide access to remedy for workers who believe tronc decisions are being unfairly manipulated to the benefit of their employer. Unite welcomes the Employment (Allocation of Tips) Act 2023. We support the measures in the Act being supported by a statutory Code of Practice that should be enforceable, with redress for employers and businesses that do not met the requirements of the code of practice.

The Act has the potential to put £200 million a year will back into the pockets of hospitality staff, making it unlawful for businesses to hold back service charges from their workers and requiring businesses to fairly allocate the tips between their workers.

This new regulation will require tips to be allocated to staff without any deductions and the distribution between staff must be fair. Employers must have regard to a statutory Code of Practice, which is being developed, when complying with their obligation to allocate tips fairly. Employers will need to keep records of tips received and how they are allocated between staff. The records ought to be kept for a minimum period and staff will be able to request the records.

If the new law is implemented correctly it is set to benefit more than **2 million UK workers** across the hospitality, leisure and services sectors. But, as with everything the devil

will be in the detail and as ever trade union access to hospitality workplaces will ensure workers are properly organised and informed to challenge unscrupulous employers who may attempt to thwart the law.

A cursory look at the Round 19 list of employers named and shamed by the Department for Business and Trade for failing to pay their lowest paid staff the minimum wage, reveals most businesses named are in the services sector with a large proportion being Hospitality sector employers<sup>1</sup>. Of the 202 employers named on the list, 39% had deducted pay from workers' wages<sup>2</sup>. Arguably this level of breach is more likely to occur in workplaces without organised trade union and where workers are unlikely to know or feel empowered to challenge employers on pay and conditions. Trade unions and a strong employee voice are prerequisites for the successful implementation of the Act and observance of the code of practice.

## Distribution of tips

We have taken feedback from our hospitality leading members who have told us the following when we asked them.

Does your workplace currently pass on all tips to staff?

- 63% Yes
- 21% Don't know
- 11% No
- 5% Only card tips on an employer operated Tronc which employees pay tax on.

11% of our leading hospitality members have said their workplaces don't pass on all the tips to staff show that this legislation will have a profound impact on the industry and will help redistribute money from employers who take tips to employees that earn them. Remember we were asking leading Unite Hospitality members who have an awareness about their rights and are campaigning for better jobs, pay and conditions for their members in Hospitality. So this would mean the issue could be amplified in workplaces without workers engaged and switched on to this issues like our leading hospitality members and activists.

We asked them: How does your workplace currently accept tips from customers?

- 40% Cash (on table or handed to staff)
- 30% Card as part of bill payment
- 14% Card separately from bill payment
- 9% Through an app
- 5% Cash (in a tip jar)

We asked them: Does your workplace automatically add a tip to a customer's bill (this may be listed as a 'service charge')?

- 71% No
- 19% Yes
- 10% A gratuity is add for tables of 8 people or more

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<sup>1</sup> Department for Business and Trade Press Release: *More than 200 companies named for not paying staff minimum wage*. 21 June 2023. [Link](#).

<sup>2</sup> Ibid.

We asked them: How does your workplace currently distribute tips?

- 35% Employer-operated tronc (tips are pooled, and distributed by employer, owner, or boss)
- 20% Employer pays out all tips from bills to the relevant staff member; and tips are not pooled
- 20% Worker-operated tronc (tips are pooled, and distributed by a member of staff)
- 15% Third party-operated tronc (tips are pooled, and distributed by separate pay or accounting firm)

We were also told about employer operated Troncs which distribute tips to employees, and tax those tips as well as other methods of worker controlled Troncs

Fairness should be the central principle for the distribution of tips. The code of conduct should be improved and strengthened to explain that considerations around who should receive the tips and what roles they perform in the enterprise, must be against the principle and fact that tips are usually meant for those collecting them, and that more senior or back-office staff are not the usual intended recipients. Though we must not forget that there are back of house staff which include catering and cleaning staff who all contribute to the front of house experience and could be on the same or lower basic pay.

We know that in the hospitality industry supervisors and managers are often poorly paid compared to the hours they work and responsibilities they have and we will always campaign for them to have better jobs, pay and conditions at work.

Workers should be able to compare the code of practice alongside a written and clear tips policy an employer should develop in partnership with their employees. The code should emphasise that the most sustainable policies are when employers and employee representatives work together to agree a policy, this should be the same with tips policy.

All workers need to be eligible to receive tips, whether they are on zero hours contracts or they are permanent employees. This should also extend to agency workers and employers should liaise with agencies to ensure these workers receive their fair allocation of tips.

We asked If agency workers are used in your workplace as well as directly employed staff, are tips divided up differently between the 2 groups?

- 44% No, this is not a factor
- 17% Yes, agency workers receive no share of tips
- 39% Don't know

Unite believes it is not fair that agency workers do not receive a share of tips and if that practice continues that would run contrary to employment law when agency workers do have parity with other workers at the same establishment if they perform the same role. Agency workers should receive a share of tips from day one of their employment.

## Allocation of tips

We have taken feedback from our hospitality leading members who have told us the following when we asked them:

What factors are considered in your workplace when determining the allocation of tips? ‘

31%	Type of role or work
29%	Hours worked
11%	Customer intention
11%	Don't know
9%	Basic pay or how workers are engaged

Here are some selected comments from our members about how tips are allocated in their workplace.

*“I think it's unfair that servers keep all cash tips and are under no obligation to tip the kitchen, especially as they can easily earn £200 a day in the summer and weekends”*

*“All the tips go towards the servers in the restaurant and bar. None will be forwarded to other receptionists or kitchen regardless of how much they participated in making the food or cleaning up. It's unfair because they use the one team philosophy for other departments to help especially nights who have to spend a lot of time cleaning up the bar and restaurant after it closes and the restaurant/bar team are allowed to drop everything when their shift finishes but take all the tips.”*

*“My workforce has decided to go cashless and this has discouraged customers to tip employees. The employer has refused to offer a new system and encourage a tip option on chip and pin contactless services.”*

Allocation of tips is not an easy task to determine, but for there has to be a fair and transparent system of allocation it is imperative that the employees and their representatives are involved and consulted in how the allocation of tips take place and there is a voice of workers that determines working closely with the employer to maintain employment harmony and foster sustainable and creative solutions to these issues.

Hours worked’ and the type of role should be added to the illustrative list of factors for consideration when allocating tips.

The draft code of conduct also sets out some illustrative factors that an employer may consider when determining the allocation of tips. These include job role, pay, performance, seniority, length of service and customer intention. However, Unite will always insist these factors are applied to a tips policy with the agreement of workers and their representatives and in consultation with workers and their representatives.

## Transparency

We believe that Employers must not be able to exercise autonomous control over tips or distribute them away from frontline workers to subsidise pay in other parts of their business

without the democratic agreement of workers. Tips must never be used to supplement pay for an employee to reach the Government's statutory living wage levels

The draft code of conduct says that a clear and objective set of factors must be used to determine the allocation and distribution of tips. This is well received by Unite as this is a key principle of fairness allowing workers to check if they have been treated in line with their employer's tips policy.

We have taken feedback from our hospitality leading members who have told us the following when we asked them.

Are you aware of there being a tipping policy in your workplace?

79% - Yes, they are aware of the tipping policy in their workplace

16% - No, they are not aware of the tipping policy in their workplace

5% - Don't know about there being a tipping policy in their workplace

Over 20% of our leading members did not know about tipping policy. Our members and activists are campaigners and activists who believe in correcting injustice in the workplace, imagine what the awareness would be in workplaces without an active and strong employees voice?

Unite believe that tips policies should be as concise and simple since this would help sustain consistency, fairness and high awareness of the policy. This must be a bold statement that should be in the final draft of the code of conduct.

The code of conduct should mention that policies should be kept as simple and concise as possible while maintaining fairness.

We want employer tips policies to be as simple and clear as possible, written in plain language and with no room for ambiguity.

Fairness is important in practice and in perception. An example is our campaign in Miller & Carter a brand of Mitchell & Butler who has brought in new tipping policy which has left many employees out of pocket.

*"I'm tipping out on a 1.5% of my gross sales this is highly unfair as the tips are not being shared at a fair amount as I am receiving no card tips in my monthly wage, the tips are also being distributed to salary managers who at quiet periods of the business still receive their salaries where as hourly paid staff may be taken down to their minimum contract hours, there is no transparency as when we ask for the amount that is being tipped out to back of house and the bar this is not available. Also it's a disciplinary if we do not put the card machine on a tip screen even if there is cash on the table, it's as if they want the guest to only tip through card, these tips are a gift and a goodwill gesture and not compulsory but we're tipping out in a manner as if was compulsory."*

#### **A Miller & Carter Unite member**

Hospitality workers and their representatives must have the right to know which facts have been used about them to calculate their share of tips. This could be hours worked, job role and any other factors that should be set out in the workplace tipping policy. Transparency means workers will have a right to know the facts about how other workers have scored against these factors.

Hospitality workers and their representatives must have the right to be provided with information about overall tip distribution to determine whether the agreed system of allocation is fair and reasonable in practice. Employers must share summary statistics related to each of these factors that form the tipping policy.

For Hospitality workers in businesses with multiple sites, it is vital that information is shared about the total amount of tips collected as each site and whether any redistribution away or to the site has taken place.

## **Implementation: Democratic Worker involvement and engagement**

We have taken feedback from our hospitality leading members who have told us the following when we asked them.

Has your employer ever sought agreement from or consulted staff on how tips will be divided up?

Yes	43%
No	43%
Don't know	14%

Nearly 60% of our leading hospitality members have told us that either their employer has never sought agreement or consulted with staff on how tips will be divided up or they don't know if their employer has sought agreement or consulted with staff about dividing up tips.

Unite believes that a workplace tipping policy should be determined by workers through a democratic process, and not be unduly influenced by employers or managers. Employers should not be able to choose tronc operators or tronc-masters. They should instead be chosen by a democratic vote of workers.

We believe the zenith of workplace democracy is consultation with an independent recognised union. Where this isn't possible there should be a mechanism that provides for direct votes, a system of elected worker representatives, or some other democratic constitution determined by workers.

Employers must allow fair elections to take place. Workers should not be disadvantaged for taking part or becoming representatives. Representatives should be provided with paid time off and facilities to allow them to fulfil their democratic role. This must all be included in the code of practice.

**Rights of access for trade unions:** Trade unions are at forefront in the fight for better wages, parental rights, holidays, sickness pay and stopping discrimination. With nearly 6.25 million members<sup>3</sup> in the UK, trade unions are our largest voluntary and democratic organisations. Trade unions are on the frontline every day, fighting poverty, inequality and injustice, and negotiating a better deal for working people. The UK has the most restrictive trade union laws in Western Europe<sup>4</sup>. A barrage of anti-trade union legislation over the past decade has meant

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<sup>3</sup> Department for Trade and Business: *Trade Union Membership, UK 1995-2022: Statistical Bulletin*. 24<sup>th</sup> May 2023. Link: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1158789/Trade\\_Union\\_Membership\\_UK\\_1995-2022\\_Statistical\\_Bulletin.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1158789/Trade_Union_Membership_UK_1995-2022_Statistical_Bulletin.pdf)

<sup>4</sup> Unite press release: *Unite vows to confront head-on any further attacks on the right to strike*. 22 May 2022. [Link](#).

that workers have found their ability to organise and take industrial action to challenge these injustices greatly restricted. Both the law and the employment culture in this country place little emphasis on workplace protection and do little to support or respect it. In the hospitality sector our union representatives are routinely thrown out of workplaces. This is a violation of Article 11 of the European Convention of Human Rights which provides that everyone has the right to form or to join a trade union for the protection of their interests. The current trade union laws allow employers to infringe workers' freedom of association. Unite demands that the Government take action to strengthen trade unions' access to workplaces.

**Sectorial collective bargaining for Hospitality:** In 1975, 84 per cent of workers were covered by collective bargaining and 64 per cent of the national income went to workers. It's no coincidence that while union strength and collective bargaining has fallen, inequality rose sharply. Unions are central to recalibrating our economy to ensure it delivers for the majority. We see a union premium in all our pay deals. Workplaces with strong trade unions based on the power of the collective are safer, more equal workplaces. Unite calls for sector wide collective bargaining for Hospitality along with proper employment protection to help address undercutting and exploitation in labour markets and the unfair treatment of migrant workers and agency workers. If we are to transition away from a low-wage, precarious economy, increasing the collective bargaining power of our workers is critical. Additionally, modern wages councils for low paid sectors should be part of the Government's Industrial Strategy (or whatever replaces it following the abolition of the Industrial Strategy Council).

**Trade union facilities:** All workers should have access to a trade union and the right to full trade union representation at work. This access should be free from employer surveillance, and the fear of intimidation should not prevent workers from speaking to a union. Unite calls for a revision in the legislation for dealing with trade union facilities, so that trade union representatives in the workplace have the time, space, resources and powers to carry out their duties which Unite is calling to be extended to union equality representatives. The right of workers to be accompanied by a trade union representative must be enforced and maintained.

**Collective grievances:** The law as it stands runs contrary to the fundamental right to Freedom of Association as it seems to suggest that workers can only effectively freely associate to pursue minimum wage or employment law matters directly with their employer if there is a collective bargaining agreement in place. Without this they are left in the vulnerable position of being forced to individualise every complaint. Unite would like to see a situation whereby a trade union can make a representative action on behalf of a group of workers to an employment tribunal. Unite believes this can be addressed by means of an amendment to the primary legislation and the accompanying ACAS Code of Practice to allow for collective grievances and representation to be recognised in law.

Unite the Union,  
1<sup>st</sup> March 2024

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