



## BERMUDA

### EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023

2023 : 28

#### TABLE OF CONTENTS

1	Citation
2	Amends section 3
3	Amends section 6
4	Inserts Part IIA
5	Amends section 37A
6	Inserts Schedule 1A
7	Commencement

WHEREAS it is expedient to amend the Employment Act 2000 to provide for the management, protection and fair distribution of employee tips and other gratuities; and make related amendments;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

#### **Citation**

1 This Act, which amends the Employment Act 2000 ("the principal Act"), may be cited as the Employment (Protection of Employee Tips and other Gratuities) Amendment Act 2023.

#### **Amends section 3**

2 In section 3 of the principal Act, insert the following definition in its correct alphabetical position—

**EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023**

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“tip” has the meaning given in section 10C;”.

**Amends section 6**

3 In section 6(2) of the principal Act after paragraph (q) insert—

“(qa) where required under section 10J, the existence of the employer’s written policy in relation to the management, protection and fair distribution of employee tips and other gratuities within the workplace and how the policy can be accessed; ”.

**Inserts Part IIA**

4 After section 10B of the principal Act insert—

**“PART IIA**

**PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES**

**Application of Part**

10C (1) In this part—

“other gratuities” means—

- (a) a payment in return for services, voluntarily made to an employer by a customer, in excess of any basic fee or standard charge imposed;
- (b) a payment of a service charge or similar charge imposed, by an employer on a customer for services, in excess of the basic fee;

“payment arrangement” means an arrangement between an employer and another person under which other gratuities are to be received by that other person instead of the employer;

“tip” means a payment in return for services, voluntarily made to or left for an employee by a customer of that employee’s employer, in excess of any basic fee or standard charge imposed;

“tip pool” means the voluntary pooling together of tips by some or all of an employer’s employees for the purposes of redistribution among some or all of the employer’s employees, where such pooling and redistribution is managed and controlled by the employees so participating.

(2) Notwithstanding section 4, an “employee” under this Part includes a worker to whom the Trade Union and Labour Relations (Consolidation) Act 2021

**EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023**

---

applies; and such worker shall for the purposes of this Part and sections 36, 37 and 39 of this Act be treated as if he were an employee under this Act, and section 2(3) of this Act applies accordingly.

**Withholding of tips or other gratuities prohibited**

10D (1) An employer shall not withhold tips or other gratuities from an employee, make a deduction from an employee's tips or other gratuities, or cause an employee to give his tips or other gratuities to the employer except where so authorised or required by—

- (a) this Act or other enactment; or
- (b) order of any court or tribunal.

(2) An employer who contravenes subsection (1) shall be liable to a civil penalty as may be imposed by the Tribunal

(3) For the purposes of an order under section 39, subsection (1)(b) of that section shall be read as if the reference to wages included tips and other gratuities.

(4) This section applies without prejudice to any order made under section 11 of the Employment (Wage Commission) Act 2019 or any enforcement measures taken under the Employment (Minimum Hourly Wage Entitlement) Act 2022 in respect of such order.

**Pooling and redistribution of other gratuities for employees**

10E (1) An employer may withhold or make a deduction from other gratuities or cause an employee to give them to the employer if the employer collects and redistributes other gratuities among some or all of the employer's employees.

(2) An employer may make a payment arrangement for the collection and redistribution of other gratuities, among some or all of the employer's employees, to be carried out on behalf of the employer or by an independent third party.

(3) For the avoidance of doubt, nothing in this section permits an employer to—

- (a) withhold or make a deduction from any tip;
- (b) cause an employee to give any tip to the employer; or
- (c) collect or make any arrangement for the collection or redistribution of tips.

**EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023**

---

**Employer to ensure timely payment of other gratuities**

10F (1) Notwithstanding any payment arrangement under section 10E(2), where an amount of other gratuities is to be redistributed to an employee, that amount is payable to the employee by the employer as follows—

- (a) in the case of an employee who is paid wages on a monthly basis, not later than 30 days following the date on which the other gratuities were paid by the customer; or
- (b) in the case of an employee who is paid wages on less than a monthly basis, not later than 14 days following the date on which the other gratuities were paid by the customer.

(2) For the avoidance of doubt, nothing in this section shall derogate from any pay reference period set out in an order made under section 11 of the Employment (Wage Commission) Act 2019 and within which payments constituting other gratuities are to be made to an employee to whom that Act applies.

**Employer etc. not to share in tips or other gratuities**

10G (1) Except as provided in subsections (2) and (3), no employer or, in the case of a body corporate, no director or shareholder of an employer may share in tips, any tip pool or in other gratuities redistributed under section 10E.

(2) An employer who is a sole proprietor or a partner in a partnership may share in tips, any tip pool or in other gratuities redistributed under section 10E if he regularly performs, to a substantial degree, the same work performed by—

- (a) some or all of the employees who share in tips, any tip pool, or in such redistribution of other gratuities; or
- (b) employees of other employers in the same industry who commonly receive or share tips or other gratuities.

(3) A director or shareholder of an employer may share in tips, any tip pool or in other gratuities redistributed under section 10E if he regularly performs to a substantial degree the same work performed by—

- (a) some or all of the employees who share in tips, any tip pool, or in such redistribution of other gratuities; or
- (b) employees of other employers in the same industry who commonly receive or share tips or other gratuities.

**EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023**

---

(4) For the purposes of determining whether work is regularly performed to a substantial degree regard may be given to any guidance as may be so issued, in relation to this section, by the Minister under section 10K.

**Duty of employer to keep records**

10H (1) Where an employer's employees commonly receive other gratuities, the employer shall, with respect to the place of work for which he has responsibility—

- (a) create a record of how all other gratuities have been dealt with pursuant to this Part; and
- (b) maintain that record for a period of three years beginning with the date on which all such other gratuities were paid.

(2) The record under subsection (1) shall include the amount of other gratuities—

- (a) paid to the employer in respect of the place of work; and
- (b) redistributed pursuant to section 10E.

(3) An employer who contravenes this section shall be liable to a civil penalty as may be imposed by the Manager or the Tribunal.

**Employee's right of access to records**

10I (1) An employee to whom section 10H applies shall be entitled to request in writing to his employer, in relation to the employee's place of work, the following information for the period (subject to subsection 3) specified in the request—

- (a) the amount of other gratuities paid to the employer at that place of work; and
- (b) the amount of those other gratuities that the employer—
  - (i) redistributed to the employee pursuant to section 10E;
  - (ii) redistributed to employees pursuant to section 10E and such other persons (as the case may be) pursuant to section 10E as read with section 10G.

(2) Where an employer to whom section 10H applies receives a request pursuant to subsection (1), the employer shall, within a period not exceeding 30 days from the date the request is made, provide the employee with the requested records in respect of the period specified in the request.

**EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023**

---

(3) An employee may make a request under subsection (1) in respect of a period only if—

- (a) the period is a period of one month or two 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 employee worked for the employer at any time during each month that forms part of the request.

(4) An employee may not make more than one request for records under this section in any three month period.

**Employer to provide policy statement in relation to tips or other gratuities**

10J (1) An employer, whose employees commonly receive tips or other gratuities or whose business is in an industry or sector within which employees commonly receive tips or other gratuities, shall ensure, with respect to the place of work for which that employer has responsibility, that—

- (a) there is a clear written policy statement providing for how tips and other gratuities are to be managed, protected and distributed fairly in accordance with this Part;
- (b) the policy statement referred to in paragraph (a)—
  - (i) is made available to all employees of the employer;
  - (ii) is presented to each new employee on the commencement of his employment with the employer; and
  - (iii) where the employer subsequently amends that policy statement, the amended version is made available to all employees;
- (c) procedures are put in place to assist every employee in understanding the policy statement.

(2) The policy statement referred to in subsection (1) must contain the terms set out in Schedule 1A and an employer may consult with employees, trade unions or other representatives (if any) in the establishment of the policy statement.

(3) The Minister may by order amend Schedule 1A.

**EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023**

---

(4) Section 6 of the Statutory Instruments Act 1977 shall not apply to an order under subsection (3).

(5) Any employer who contravenes—

(a) subsection (1)(a) shall be liable to a civil penalty as may be imposed by the Manager or the Tribunal;

(b) subsection (1)(b) shall be liable to a civil penalty as may be imposed by the Tribunal only.

**Minister may issue guidance**

10K (1) For the purposes of promoting fairness and transparency in relation to the management, protection, and distribution of tips and other gratuities in accordance with this Part, the Minister may—

(a) issue guidance and may, from time to time, revise such guidance;

(b) publish such guidance so issued or revised in such manner as he considers appropriate.

(2) The Minister may carry out such consultation as he considers appropriate—

(a) before issuing any guidance under this section; or

(b) unless he considers that it is unnecessary to do so before revising any guidance under this section.

(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to any guidance issued or revised under this section. ”.

**Amends section 37A**

5 In section 37A(1) of the principal Act, after “Part II” insert “or Part IIA”.

**Inserts Schedule 1A**

6 In the principal Act after Schedule 1, insert—

**EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS AND OTHER GRATUITIES) AMENDMENT ACT 2023**

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**"SCHEDULE 1A**

(Section 10J)

**CONTENT OF POLICY STATEMENT IN RELATION TO  
EMPLOYEE TIPS AND OTHER GRATUITIES**

The policy statement referred to in section 10J shall contain the following provisions—

- (a) a statement explaining whether the employer encourages or requires customers to pay tips or other gratuities;
- (b) a statement indicating whether a tip pool is permitted at that workplace;
- (c) a statement explaining how other gratuities are collected and redistributed in accordance with this Part including—
  - (i) the period within which redistribution is made;
  - (ii) the employees or other persons (as the case may be) to whom redistribution applies;
  - (iii) how other gratuities are redistributed when an employee is on any period of leave; and
  - (iv) whether any payment arrangement exists;
- (d) where a payment arrangement exists—
  - (i) a statement explaining how other gratuities are received and identifying the person responsible for their receipt; and
  - (ii) a statement explaining whether other gratuities are to be redistributed under the payment arrangement and, if so, how other gratuities so received are redistributed.

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**Commencement**

7 This Act comes into operation on 1 March 2024.

[Assent Date: 13 October 2023]

[Operative Date: 01 March 2024]