

# TIPPING

**New legislation has thrown the spotlight once again on the controversial matter of service charges, says Phil Mellows.**

It was 18 months ago that trade unionists gathered outside the Wimbledon branch of Pizza Express to protest at the dismissal of an employee who spilled the beans on a delicate subject for restaurants – tipping. Nabil Guirguis had blown the whistle on a common practice customers weren't supposed to know about: the restaurant took a cut of the service charge.

The demonstration led to a campaign in which the Unite union joined forces with the *Daily Mirror* to get restaurants to sign a Fair Tips Charter declaring all service charges would go to staff. Prime Minister Gordon Brown jumped on board, a Government investigation got under way and the upshot of it all is a change in the law.

From 1 October employers – hairdressers and taxi firms, as well as restaurants – are not allowed to use tips to bring workers' pay up to the minimum wage.

Ironically, Pizza Express wasn't doing this. It was merely slicing off a small percentage to pay for the running of a tronc, a system used to distribute tips among staff. Unite, the Government and industry are now working together on a voluntary code of

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practice that will aim to make these practices transparent and ensure customers know where their tips are ending up.

In a pre-emptive strike the British Hospitality Association (BHA) launched its own code at the end of July. This says a restaurant should disclose to customers, by a written note at the premises and on any website, any deduction made from service charges for handling costs and how the remainder is shared out.

As BHA Chief Executive Bob Cotton notes: “We’ve had too little information about the way the service charge is collected, what it is for and who receives it. This has given rise to widespread criticism which has damaged the industry’s reputation.”

## Costs and benefits

As far as the new legislation itself goes, the Government says some 60,500 workers will be affected, 48,500 in hotels and restaurants, 11,000 in hairdressing and beauty. The estimated cost to business of bringing their pay up to minimum wage totals £92.5 million, including National Insurance (NI). The BHA believes 30,000 restaurants will be hit and the cost will be rather more.

Employers may have to adjust employment contracts but could find benefits in better employee relations, improved retention and a greater incentive for staff to deliver a high standard of customer service.

And the Government believes a code of practice that enables customers to make “informed tipping decisions” will increase tips, raising the take-home pay of restaurant staff by as much as £73 million.

## A welcome from the industry

The hospitality industry has, in the main, and with varying degrees

of enthusiasm, welcomed the new legislation. Pizza Hut, along with TGI Friday’s, was the first to sign the *Mirror’s* charter.

“We have always ensured our employees receive 100 per cent of their tips on top of their wages as we believe staff should be rewarded for providing an excellent service,” says Jayne Little, Vice President of Human Resources. “We are delighted legislation has finally come in to prevent customers being hoodwinked into contributing to company profits.”

Tragus, which has 270 restaurants across the UK, including the Café Rouge, Bella Italia and Strada brands, found itself this summer the subject of a battering by the *Observer*. It is one of the companies that used tips to make up minimum wage, but is now ready to come clean and its statement, displayed on menus, is typical of the new industry attitude.

“Tragus is taking significant steps to ensure customers and staff feel confident in its policies and are clear on how it operates wages and tips. Credit card tips and service charge will no longer count as earnings for the purposes of the national minimum wage. After a 10 per cent deduction for administrative costs they will be distributed to staff, both in the kitchens and front of house, in full and in addition to their pay.”

## A matter of acceptance

While they are keeping quiet about it, other employers have accepted the legislation more grudgingly. Solicitor Laura Kearsley at Weightmans advises Pizza Hut – and less happy restaurateurs.

“There is a lot of confusion and a level of hard feeling among some employers,” she says. “There are massive financial implications for some companies and it’s a real squeeze for them. A lot of restaurants are on tight margins.

“Some, like Pizza Hut, made the decision to change early to capture the good publicity, but companies don’t have pots of money lying around to finance this kind of thing. They may need to make cuts elsewhere to pay the extra wages and that takes time. If they have to change people’s contracts that means a 90-day consultation period.

“It’s taking a lot of planning. Smaller businesses could get stung, and I also think it could mean price increases too. Part of the cost may have to be passed on to the customer.”

Restaurants might also feel they haven’t deserved the bad publicity, according to Accountant Peter Davies of Vantis, a specialist in the complexities of tips and service charges.

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“There may have been some dubious practices but I’m not aware of any company behaving illegally,” he says. “The possibility of using tips towards the minimum wage was the result of an agreement between Government and industry when the legislation was drawn up in 1998 and it was well debated at the time. It was never a loophole in the law dreamed up by devious accountants. Nobody wants to mislead customers or rip off employees.”

But he’s pleased there will now be more transparency. “There has to be education on all sides about the way things are done. In general the industry has realised the time has come for this, and the BHA code will give people more confidence that restaurants aren’t ripping anybody off.”

## Solving the problem

So, now everyone’s going to know about it, what’s the best system for dealing with tips? One solution, favoured in countries such as France, would be to do away with service charges altogether and add the cost of service to the price of the food – if you have the courage.

Some restaurants have a fixed compulsory service charge, usually between 10 and 12.5 per cent, which makes it easy for the employer to share it out among staff. Gastropub operator the Underdog Group recommends this method.

“By applying the same service charge to bills we ensure all customers are treated equally,” explains Director

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## Most establishments will continue with discretionary tipping and some sort of tronc

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Will Beckett. “We don’t want the table ordering expensive bottles to get preferential treatment to teetotallers.

“I also think you should pay your staff reasonably well and allow them to keep all the service charge,” he adds. “We ensure the money goes to everyone, including the kitchen, and we have a very low turnover of staff.”

It’s likely, though, that most establishments will continue with discretionary tipping and some sort of tronc system. This brings its own complications for staff members.

### Troncs and troncmasters

A tronc – the word is derived from the French for “cash box” – is itself subject to laws that seek to remove the employer’s

influence over how tips are distributed among staff. A tronc must not be run by the organisation but a member of staff, known, grandly, as the troncmaster. In return savings are made on NI contributions. There are two ways of running them, as Peter Davies explains.

“An employer can collect the tips together and pay it to the troncmaster who then distributes it to members of the scheme via a separate payroll system. Or more commonly the employer tells the troncmaster what’s available in tips and then distributes the money according to the troncmaster’s instructions, including tips as a separate item in pay.”

Taking a lawyer’s point of view, Laura Kearsley is not keen. “Troncs require a fine, delicate balance between legal purposes and accounting purposes. Our view is that the tronc should not be contractual; the company should not get mixed up in it. It does not want to be liable should the payments, for whatever reason, not be made.

“At the same time troncs are complicated and it’s a big responsibility for a staff member to operate one fairly on top of everything else they have to do.”

In fact, legally, employers are obliged to keep their distance

from the tronc, as Colin Charlton, Business Development Director of Ascent Technology, which provides accounting solutions to the hospitality trade, points out.

“We’ve encountered a lot of confusion about who should be responsible for a tronc,” he says. “We’ve had to tell clients that have put a senior manager in charge that they’re operating illegally. Staff have to run it themselves. Then you’ve got to trust the guy running it – but some are run very well. In Chinese restaurants a troncmaster is a position with status, and they can be very well paid.”

### Cards or cash

Another potentially explosive problem in the tipping minefield is the customer. As confidence in the destination of their tips has waned, rather than adding a service charge onto their card payment they have reverted to cash to make sure that nice waiter gets what he deserves.

This might seem fair but it means that neither the person who greeted you and showed you to your table, nor the barperson who poured your drink, nor the people in the kitchen who did all the work actually making the food see the colour of your gratitude.

It could mean trouble for the waiter, too. That cash tip is as taxable as any other remuneration, and while HM Revenue & Customs (HMRC) might turn a blind eye to a minority of tips in cash in the knowledge it’s got the money from card payments, that could change.

“If there’s a move back to cash it won’t be long before the HMRC turns its attention to individual waiters and waitresses,” Peter Davies warns. “And research has shown that people paying a cash tip add an extra seven or eight per cent compared to 10 to 12 per cent on a card.”

Therefore, perhaps it is the customer who has finally spoken loudest in the great tipping debate. The threat of going back to cash is something the restaurant industry just could not stomach.

*Phil Mellows is a freelance writer; philmellows@btinternet.com*

