



## Bill 12, Protecting Employees' Tips Act, 2014

### Current Legislation:

On December 10<sup>th</sup>, *Bill 12, Protecting Employees' Tips Act* received royal assent. Therefore, the law will come into effect in June 10 of 2016.

In essence, this bill treats voluntary tips as wages. If an employer is found to be in contravention of the act, they would be subject to the same process as wages owed. As such, the Ministry of Labour would enforce the code the same as any other *Employment Standards Act* provision.

Employers are defined as an owner, director or shareholder of the establishment.

The bill states that an employer cannot withhold or make deductions from the employee's tips or other gratuities except under certain circumstances.

Those circumstances are:

1. Employers may oversee and distribute tip pooling agreements as long as the employer does not receive a share of the tip pool
2. An employer may participate in the tip pooling agreement as long as that person performs the same work as others in the agreement
3. A collective agreement that has agreements counter to this legislation
4. If tips are put on credit cards, the credit card fee can be deducted from the amount remitted to the staff

**Service Charge Note:** While the Canadian Revenue Agency treats service charges differently than voluntary tips, the new Ontario legislation contains a clause that could cause service charges to be considered as gratuities under the legislation. We are currently working with the Ministry of Labour to discuss how they will interpret this part of the legislation.

The best advice at this point is to ensure that any contract or bill indicates that part of the charge will go to the house or administration. More information will follow as we get feedback from the Ministry of Labour.

## CRA Regulations:

While not addressed in this legislation, it is important to look at this in conjunction with applicable Canadian Revenue Agency (CRA) regulations.

If the tips or gratuities are specified by the restaurant and put on the bill as an automatic gratuity, these are considered “controlled tips” and the CRA regulations require the employer and employer to pay source deductions the same as wages. If the restaurant requires employees to participate in tip-pools as a part of the employment contract (written or verbal), these are also considered controlled tips. If tips are left by credit card they are considered “direct” provided they are paid out to the server by the next business day and no records are kept.

If tips or gratuities are given voluntarily by the customer, they are considered “direct tips” and source deductions are not required.

In some restaurants, servers collect tips directly from patrons and then contribute a portion of these tips to an employer-run pool. The employer re-distributes the pool to the kitchen staff and other employees who do not receive tips directly from patrons.

In this situation, CRA considers the tips collected by servers as “direct tips” and the tips paid out by the employer as “controlled tips.” If servers are required to put all tips into the pool to be re-distributed by the employer, then all amounts distributed from the tip pool are deemed “controlled tips.”

For more information on CRA guidelines, consult Restaurants Canada’s [tip sheet](#).

## Background:

Bill 12 was passed into law and will take effect on June 10 of 2016.

This bill is the latest iteration of a Private Members’ Bill that had been introduced on three different occasions previously by Michael Prue, MPP. Prue’s bill was simplistic to the extreme, consisting of only three lines which would have had the effect of banning any tip sharing in a restaurant setting.

Mr. Prue was defeated in the last election and his successor, Arthur Potts fulfilled a campaign commitment to reintroduce this legislation. Restaurants Canada worked with Mr. Potts to achieve radical changes to the original bill while providing protection for both the employee and the restaurant operator.

Restaurants Canada also held two information sessions with MPP Potts to discuss this and other restaurant issues.

The changes we achieved in the newest version of the bill:

- Using the Ministry of Labour definition of “employer” to avoid managers from falling under the legislation
- Providing an exemption for tip-sharing pools
- Providing an exemption for owners who also work in the restaurant
- Providing an exemption for collective agreements (mainly affecting the hotel and catering industry)