



MINISTERIAL STATEMENT

by:

The Hon. Jason P. Hayward, JP, MP

Minister of Economy and Labour

Employment Act Procedural Guidance for Determining Substantial Degree Work with Respect to the Distribution of Tips and Other Gratuities

9th February 2024

Good morning, **Mr Speaker**. I am pleased to introduce in the Honourable House today, Procedural Guidance for determining what constitutes work regularly performed to a substantial degree with respect to the distribution of tips and other gratuities. This Guidance has been prepared pursuant to section 10K of the Employment (Protection of Employee Tips and Other Gratuities) Amendment Act 2023 (the “Amendment Act”).

Mr Speaker, the Employment Act 2000 sets the minimum requirements for employment relationships within Bermuda. As the Members of this Honourable House may recall, the Amendment Act was passed last year to provide for the protection and fair distribution of employee tips and other gratuities and prohibit employers and their directors and shareholders from sharing in any tips, tip pool or any other gratuities unless they regularly perform, to a substantial degree, the same work performed by some or all of the employees who share in the tips, tip pool or redistribution of other gratuities.

Accordingly, **Mr Speaker**, section 10K of the Amendment Act provides for the Minister to issue and publish guidance, for the purpose of determining whether work is regularly performed to a substantial degree.

Mr Speaker, when drafting the Procedural Guidance, the views of the Labour Advisory Council, a tripartite body consisting of employer, employee and Government representatives, were sought and considered and agreement on the Procedural Guidance was reached.

Mr Speaker, the Procedural Guidance includes provisions which detail:

- a. what it means to perform work to a substantial degree;
- b. what it means to perform the same work some of all of the employees who share in the tips, tip pool or redistribution of other gratuities; and
- c. what a Labour Relations Officer will consider when reviewing a complaint in this regard.

Mr. Speaker, the Procedural Guidance will strengthen the policy statement that employers are required to create and implement pursuant to the Amendment Act, which provides for how tips are to be treated and other gratuities are to be collected and redistributed.

Mr Speaker, the Procedural Guidance will ensure adherence to the Primary Act and prevent the misapplication of tips and other gratuities and unauthorised participation in the tip pool.

Finally, **Mr Speaker**, the Procedure Guidance will come into effect on 1 March 2024 and will be applied by the Department of Labour and the

Employment and Labour Relations Tribunal in their adjudication process.

Mr Speaker, as we continue to strengthen the protections afforded to employees/workers within Bermuda, I am assured that with the support of industry, their social partners and other relevant employer representatives this will prove to have a positive impact on the workforce within Bermuda and limit abuses as it pertains to employees being able to retain earned tips and other gratuities.

Thank you, **Mr Speaker**.