



Government of Bermuda

**Ministry of Economy and Labour**

**Department of Labour**

**PROCEDURAL GUIDANCE FOR DETERMINING WHAT CONSTITUTES  
WORK REGULARLY PERFORMED TO A SUBSTANTIAL DEGREE  
PURSUANT TO THE EMPLOYMENT (PROTECTION OF EMPLOYEE TIPS  
AND OTHER GRATUITIES) AMENDMENT ACT 2023**

**Note: This Procedural Guidance is subject to the provisions of the legislation and subject to change at any time.**

<b>1.0 PURPOSE</b>
<ul style="list-style-type: none"><li>▪ This procedural guidance prescribes what is to be taken into consideration when determining whether work is regularly performed to a substantial degree.</li><li>▪ This procedural guidance is meant to provide guidance for adherence to the legislation and to set out what will be considered by the Department of Labour and the Employment and Labour Relations Tribunal during the investigation and determination of any related complaint, respectively.</li></ul>
<b>2.0 RELEVANCE</b>
<ul style="list-style-type: none"><li>▪ This procedural guidance is relevant to all employers with employees who commonly receive tips and other gratuities.</li></ul>
<b>3.0 LAW</b>
<ul style="list-style-type: none"><li>▪ Employment (Protection of Employee Tips and other Gratuities) Amendment Act 2023 (to come into operation on 1 March 2024)</li><li>▪ Referred to as “the Act” in this procedural guidance.</li><li>▪ The Employment Act 2000 (the “Principle Act”)</li></ul>
<b>4.0 WORK REGULARLY PERFORMED TO A SUBSTANTIAL DEGREE</b>
<ul style="list-style-type: none"><li>▪ Section 10G(1) provides that no employer, director or shareholder of an employer may share in the tips, tip pool or redistribution of other gratuities.</li><li>▪ Section 10G(2) provides for an exception where an employer is a sole proprietor or partner and he regularly performs, to a substantial degree, the same work performed by some or all of the employee or employees of other employers in the same industry.</li><li>▪ Section 10G(3) provides for an exception where a director or shareholder of an</li></ul>



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employer regularly performs, to a substantial degree, the same work performed by some or all of the employee or employees of other employers in the same industry.

- Section 10G(4) provides that the Minister may issue guidance for the purpose of determining whether work is regularly performed to a substantial degree.

**Procedural Guidance:**

- “Regularly performs to a substantial degree” refers to work that is physically completed at a degree that is greater than occasional but which may be less than constant and includes work normally or recurrently performed every work shift; this does not include isolated or one-time tasks.
- When considering whether the kind of work being performed is “the same work”, the work to be compared is work that the employees, or employees of other employers within the same industry, are performing contemporaneously. This comparison is to be made on the basis of the actual work that the employees perform and not the terms of their statement of employment or job descriptions.
- Upon receipt of a complaint in this regard, the Labour Relations Officer will examine the work as a whole and consider all information that is relevant in the particular circumstances. There are a number of different possible scenarios where a finding of “regularly performs to a substantial degree” may be made.
  - For example, where an employer, who is a sole proprietor or partner in a partnership (or a director or shareholder of an employer) performs 75% of the work shift and on a regular basis, that is the same to the employees of the employer and that attracts tips and other gratuities, it may be concluded that the employer regularly performs, to a substantial degree, the same work performed by his employees.
- This example does not suggest that, as a threshold, 75% of the employer, director or shareholder’s regular work must be spent on the same work before a finding



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that work is being regularly performed to a substantial degree can be made. There may be circumstances where a higher or lower percentage of time may be spent on the same work, in order for a finding to be made that the employer, director or shareholder of the employer regularly performs, to a substantial degree, the same work performed by the employees of the employer.