

Client Advisory

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6th Amendment to the Employment Act: Application of Service Charge

In Brief

The 6th Amendment to the Employment Act sets out rules and procedures with respect to collection and distribution of service charges. These changes were much awaited and driven by the outcry of employees of the tourism industry.

However, several provisions of the Amendment, including those on service charge are still ambiguous and left for interpretation. Hence, in this advisory we provide some clarity with respect to the key aspects of collection and distribution of service charge with a focus on the tourism industry.

Frequently Asked Questions

1. Is it now mandatory to collect service charges?

A service charge of not less than 10% is required to be collected from all services provided by businesses operating in the tourism industry. Conversely, businesses operating in industries other than the tourism industry have the discretion to collect service charges.

2. Are retail sales subject to service charge?

Retail items which are provided separately from the services of the resort (such as boutique shop sales), which are not generally categorised as services will not be subject to collection of service charges.

3. Are tourist accommodation services subject to service charge?

The Amendment stipulates that a service charge of not less than 10% must be collected from all the services provided by the businesses operating in the tourism industry.

While the Sixth Amendment does not define what would constitute a “service” that is subject to service charge, no exclusion or distinction is made for specific services provided by businesses operating in the tourism industry.

Accordingly, as the law reads now, tourist accommodation services and any other service provided by businesses operating in the tourism industry should also be subject to service charge.

4. Does the Amendment provide how service charge should be distributed?

Service charges collected for the preceding month must be distributed before the end of the ensuing month. For example, where an employer collects service charge for the month of April 2021, that service charge should be distributed between the eligible employees before the end of May 2021.

All service charges collected by the employer must be equally distributed between all employees without discriminating between employees working in different positions or different departments.

5. Can employers make any deductions from the service charges collected, prior to distribution?

As is practiced now, employers are only permitted to make a maximum of 1% deduction from the total service charge collected for a month. This 1% deduction is made as an administrative charge in association with the collection and distribution of service charge.

6. Does the resort operator have to pay service charges to the employees of the outsourced facilities such as outsourced dive centres and boutique shops?

As per the Sixth Amendment, it is the employer who is required to collect and distribute service charges among all the employees. Employers are also required to distribute service charges collected, between all employees directly and indirectly involved in providing the services at the resort.

In the case of an employer operating a resort, the employer will only be required to distribute the service charges collected by the employer, for services provided by the employer at that specific resort. Any such service charges collected should only be distributed to the employees based at the resort and involved (directly and indirectly) in providing the services of the resort.

This in essence means that an employer would not have an obligation to distribute service charge to anyone who is not an employee or to those who work as independent contractors.

7. Are employees in senior management positions eligible for service charges?

Employers are required to distribute service charges equally between all employees, without discriminating between employees working in different positions. Although employees in senior management positions were excluded from the distribution of service charges, when the Bill on Sixth Amendment was initially proposed to the Parliament, this exclusion was not provided for in the Act when it was passed by the Parliament.

The Sixth Amendment defines the phrase “all employees” as employees directly and indirectly involved in providing services. In effect this means, if an employee is based at the resort, service charges collected must be distributed to the employee, irrespective of the employee’s seniority in the organisation, i.e. whether the employee is a senior management employee or not.

8. Do employers have to include employees on probation when distributing service charges?

Sixth Amendment provides that employees on probation are also eligible to all rights stipulated under Sections 32 to 57 of the Employment Act. Provisions relating to service charges are included in Section 52 of the Employment Act. Thus, employees on probation will also be eligible to service charges in accordance with the Act.

9. What would happen if a resort operator collects service charges from all outlets (including outsourced facilities)?

The vital point to note is that the burden to distribute service charge collected among all their employees lies with the employer.

As such, it will be the responsibility of the employer (in case of an outsourced diving facility, the operator of the outsourced diving facility) to distribute service charges collected by such outsourced facility among the employees of the outsourced unit.

Where a resort collects service charge with respect to the outsourced facility for ease of administration, necessary arrangements should be made between the operator of the outsourced unit and the resort operator to facilitate proper distribution of the service charges collected in relation to the services provided by the outsourced unit.

10. Are there any record maintenance requirements relating to service charges?

Employers are required to maintain monthly records relating to service charges, including the total service charge received, amount entitled to each employee, the amount distributed and the number of employees to whom service charges were distributed.

Employers are also required to submit the aforementioned records to the Labour Relations Authority and the Maldives Inland Revenue Authority twice every year in accordance with the Regulation made by the Labour Relations Authority. Further, records relating to service charges must be maintained in a readily available form, so that such information can be communicated to the Labour Relations Authority, in accordance with any such instructions of the Labour Relations Authority.

11. If employers fail to distribute service charges and maintain records relating to service charges, are employers subject to any penalties?

If an employer fails to collect 10% service charge from all the services provided by the businesses operating in the tourism industry and fails to distribute service charge collected equally between all the employees, in accordance with the Amendment, such an employer may be fined for an amount not more than MVR 100,000.

If an employer fails to maintain records of service charge collected and fails to submit such records to the Labour Relations Authority and Maldives Inland Revenue Authority in accordance with the Amendment, such an employer may be fined for an amount not more than MVR 50,000.

12. What is the commencement date for the rules relating to service charges?

Rules relating to service charges included in the Sixth Amendment will come into effect on 1 January 2021.

About us

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Contact us

If you have any questions or need our assistance, please contact your principal advisor or any one of the following members of our team.



Rafa Rasheed

rafa@ctlstrategies.com



Mariyam Naufa

naufa@ctlstrategies.com

CTL Strategies LLP
Third Floor, H. Meerubahuruge Aage
Ameer Ahmed Magu
Male' 20077, Maldives

+960 7956996, +960 9588258
ask@ctlstrategies.com
www.ctlstrategies.com