

What are you legally allowed to do to offset the minimum wage hike?

by Emily Douglas
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The recent changes in employment law brought about by the Fair Workplaces, Better Jobs Act have left some employers scratching their heads – most noticeably over the minimum wage hike.

We spoke to Thomas Gorsky, lawyer at Sherrard Kuzz, who talked us through what employers are legally allowed to do to offset the recent increase.

“Regarding the restaurant industry, you are permitted to reallocate tips to managers,” he explained.

“Introducing tip pooling arrangements could be a way of offsetting the minimum wage hike. For example, if managers are being paid minimum wage now there will be a lot of pressure for them to see an incremental bump – to separate them from more junior members of staff.”

However, whilst this works for a sector which deals in gratuity, the same can’t be said for employers in less customer-facing roles.

“In jobs which don’t allow for tips, there are limited options,” explained Gorsky. “The only real option is to increase prices or cut costs elsewhere. The reality is, if you have to pay someone a certain amount per hour and you don’t currently have benefits, there’s no real saving you can offset it with.

“However, if you are providing perks, you could lawfully remove them. But, bear in mind, you have to give advance notice in order to avoid any legal claims.

“If you give someone six months advance notice that their benefits plan will be removed then, at least for employees who have employment contracts with protective termination clauses, there’s very little they can do to object. But if you don’t have those types of clauses, then you can still obtain protection by giving advance notice. How long will depend on what an employee’s notice entitlement is.”

With the increase in minimum wage, many smaller businesses may find themselves facing difficult times ahead. But are you legally allowed to fire an employee because of the increased costs of the wage hike?

“Any employer is always entitled to terminate an employee’s employment, so long as they comply with that employee’s termination entitlement,” explained Gorsky.

“For example, you could terminate an employee simply because you don’t agree with their job philosophy. You don’t need to prove you have cause for termination, however if you are laying somebody off because you cannot afford to pay their wage, that doesn’t relieve you of the obligation to give notice - or pay in lieu of that notice.”