

Department of Labor Issues New Rule Limiting Use of Tip Credits

Written by Christopher Feudo, James Fullmer

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On October 28, 2021, the United States Department of Labor (DOL) announced a new rule affecting employers with tipped employees. The rule limits the circumstances under which employers may take a “tip credit” against an employee’s wages – thus reducing the minimum wage the employee must be paid – to time the employee is actually performing tipped work or engaged in activity that “directly supports” tip-producing work.

Federal rules surrounding the tip credit have undergone significant changes over the past few years. Prior to 2018, employers could take a tip credit against employee wages so long as the employee spent at least 80% of his or her time doing tipped work. The Trump administration rescinded this guidance and, in late 2020, issued a rule allowing employers to take a tip credit for employee time spent doing non-tipped work so long as that work was performed at the same time as or “for a reasonable time before or after” tipped work.

The new rule cuts down on the use of the tip credit in two primary ways: First, the tip credit may only be taken against non-tipped work when that non-tipped work “directly supports” tip-producing work, defined as work “done in preparation of, or to otherwise assist tip-producing customer service work.” Second, no tip credit may be taken for non-tipped work, even if it “directly supports” tip-producing work, if that work exceeds 20% of the employees’ total work week or is done for more than 30 minutes continuously.

The new tip credit rule will take effect December 28, 2021. Employers with tipped employees should ensure that their tip credit practices are in compliance.

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