

The New Rule Becomes Effective Nov. 23, 2021

On Sept. 23, the U.S. Department of Labor [announced](#) a final rule that will amend Fair Labor Standards Act (FLSA) regulations for tipped employees. The final rule is scheduled for publication in the Federal Register on Sept. 24, 2021, and is expected to become effective on Nov. 23, 2021.

Tips for Managers and Supervisors

The final rule prohibits managers and supervisors from keeping any portion of an employee's tips, regardless of whether the employer takes a tip credit. New language in the FLSA regulations clarifies that managers and supervisors may only keep the tips they receive directly from customers based on the services they directly and solely provide.

Tip Pooling

The final rule also prohibits employers, managers and supervisors from receiving tips from—but not contributing tips to—an employee tip pool.

However, the final rule allows employers that do not claim a tip credit (meaning they pay their tipped employees the full minimum wage rate instead of the tipped employee minimum wage rate) to impose a tip pooling arrangement that includes employees in the establishment who are not employed in an occupation in which they customarily and regularly receive tips (e.g., dishwashers, cooks).

Enforcement

The DOL is of the opinion that civil money penalties are “an important equalizer in the economy by helping to ensure fair competition for responsible employers.” For this reason, the final rule restores the DOL's ability to impose penalties of up to \$1,100 per violation against employers that take tips earned by employees, regardless of whether the violations were repeated or willful.