The New Rule Becomes Effective Dec. 28, 2021

On Oct. 28, 2021, the U.S. Department of Labor (DOL) announced the publication of a new rule for tip regulations under the Fair Labor Standards Act (FLSA). The new rule clarifies that employers may only take a tip credit for tipped employees when these employees are performing work that is part of their tipped occupation. The new rule becomes effective on **Dec. 28, 2021**.

Dual Jobs

The DOL recognizes that some employees routinely engage in both tipped and nontipped occupations. These are known as "dual job" situations. However, the DOL also recognizes there is a difference between employees with dual jobs and employees who incidentally engage in nontipped occupations, such as maintenance work and preparatory or closing activities.

The new rule clarifies that employers can take a tip credit for the time a tipped employee spends performing work that is not tip-producing (but directly supports tip-producing work) unless that work is performed for a substantial amount of time. **Tip-producing work** is "any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips." **Directly supporting work** is work performed by a tipped employee in preparation of or to otherwise assist tip-producing customer service work.

Substantial amount of time

The new rule defines "substantial amount of time" as either (1) at least 20% of the hours in the workweek for which the employer has taken a tip credit or (2) a continuous period of time of at least 30 minutes.

The new rule provides a number of illustrations to help employers navigate different scenarios.