

While Some Provisions Will Take Effect, The DOL Is Also Proposing Changes to the Original Rule

On Dec. 22, 2020, the U.S. Department of Labor (DOL) published a final rule to amend employee tip regulations under the Fair Labor Standards Act (FLSA). The final rule was scheduled to take effect on March 1, 2021; however, on Feb. 26, 2021, the DOL delayed the rule's effective date to April 30, 2021.

Portions Approved to Take Effect

After reviewing the rule for consistency with law and policy, the DOL announced that it will allow provisions that increase worker protections and earnings to take effect in April, including provisions that:

- Prohibit employers (including managers and supervisors) from keeping their employees' tips, regardless of whether the employer takes a tip credit; and
- Allow employers that do not take a tip credit to include non-tipped workers (including cooks and dishwashers) in nontraditional tip-sharing agreements.

New DOL Proposals

While some provisions will be allowed to take effect, the DOL also proposed the following changes to the December employee tip regulations:

- A [proposal](#) to expand the circumstances in which the DOL can assess civil penalties and a request for comments on whether to extend the rule's protections to tipped managers and supervisors; and
- A [second proposal](#) to further extend the delay for certain penalty provisions, as well as the rule for how to apply tip protections to employees who perform both tipped and non-tipped work, to Dec. 31, 2021.

The DOL invites comments on both proposed rules at www.regulations.gov.