Department of Labor Clarifies Management Cannot Keep Tips From a Tip Pool and Reverts Back to the Dual Jobs Rule

Labor & Employment Law Update

By Heather Bailey and Kevin Kleine on March 25, 2025

In January, the U.S. Department of Labor (DOL) issued an opinion letter clarifying managers and supervisors still cannot receive or keep tips, including from a tip pool.

This came shortly after the DOL restored the dual jobs rule in December of 2024, which provides that employers can claim a "tip credit" under the Fair Labor Standards Act (FLSA) only for those jobs an employee works under which the employee customarily and regularly receives at least $30 a month in tips for their work.

Tip Pooling Arrangements

The FLSA prohibits employers from keeping any portion of employees' tips for any purpose. On January 14, 2025, the DOL clarified that employees who satisfy the executive employee duties test under the FLSA, thus qualifying as managers or supervisors, may not receive tips from an employer-mandated tip pool. This means that managers who satisfy the FLSA executive duties test cannot receive any portion of tips from an employer-mandated tip pool—**even if they also perform the same job duties and responsibilities as tipped workers during their shift**. For example, if an employee with managerial or supervisory duties bartends during their shift, they still may not keep any tips. This goes for those in management who hire, fire, discipline, and do scheduling.

If you have someone in management participating in tip pooled work, their pay or salary should compensate them for doing their job duties—none of their pay can come from the tip pool.

Restoration of the Dual Jobs Rule

On December 17, 2024, the DOL issued a technical rule to restore the pre-2021 dual jobs regulation. The restoration abolishes the DOL's so called "80/20/30" rule, which required that:

1. Tipped employees could not spend more than 20 percent of their time per/week performing tasks that do not generate tips but support tip-producing work; or
2. More than 30 continuous minutes performing tasks that support tip-producing work.

As a result, employers are no longer required to monitor the amount of time employees spend performing non-tip producing work or performing tasks that support tip-producing work, such as prepping tables for lunch or dinner service.

For purposes of the dual jobs rule, what matters is whether employees customarily and regularly receive at least $30 a month in tips for their work—and not the tasks they perform or how much time they spend performing them to permit employers to claim the tip credit allowed under the FLSA. This will come into play when you have an employee who works in both a tip-producing position and a non-tip producing position.

Key Takeaways

This is good news for employers of tipped workers, particularly restaurants and bars, because it means they can go back to the pre-2021 method of claiming a tip credit under the FLSA for any tipped employee who customarily and regularly receives more than $30 a month in tips.

In short, employers are no longer required to pay tipped workers the minimum wage rate for time spent performing non-tipped duties. However, at no time can an employee's compensation fall below minimum wage when combining their tips with their hourly pay. If it does, the employer makes up the difference.

Employers should also take note that the December rule and January opinion only affect federal law and what is required for employers to claim the tip credit and the rules governing tip pooling under the FLSA. They ***do not*** affect what is required of employers under any applicable state or local wage laws. Thus, employers should be mindful of and continue to follow their state and local laws.

Upcoming Webcast

BREAKFAST BRIEFINGS - BEYOND SWEAT EQUITY: MODERN COMPENSATION STRATEGIES FOR ENHANCED ENGAGEMENT & RETENTION

Wednesday, April 16, 2025 | 8:30 AM CT

In today's competitive talent marketplace, traditional compensation models alone are no longer enough to attract and retain top performers. Join us for "Beyond Sweat Equity: Modern Compensation Strategies for Enhanced Engagement & Retention," where we'll explore innovative approaches to total rewards that can help drive measurable business outcomes and increase employee retention and engagement.

This webcast will provide a high-level overview of traditional and non-traditional ways to structure bonus awards, equity compensation, and other benefits. Rebecca Bush & Kelly Haab-Tallitsch will cover practical considerations on how these structures can be executed in a way to minimize tax burdens as well as key compliance concerns to keep in mind during the design process.