

DOL Releases Final Rule Regarding Tips, Expanding Penalties for Short-Changing Tipped Workers

Labor & Employment Law Update

By Heather Bailey and Peter Hansen on September 28, 2021



Employers with tipped employees, take note: the U.S. Department of Labor (DOL) released its long-awaited final rule on tip regulations, which was officially published on September 24 and becomes effective November 23, 2021. The final rule makes a number of changes that will impact tipped employees and

their employers, including:

Civil Money Penalties

The DOL may assess a penalty up to \$1,100 per violation against employers who take tips earned by their employees – regardless of whether the violations are repeated or willful. This means a penalty could be assessed on an initial, even unwilful, violation. The final rule also makes it clear that, in assessing penalties, the DOL must consider the seriousness of the violation and the size of the employer's business.

Manager & Supervisor Tips

The final rule clarifies that managers and supervisors may hold on to tips they receive from customers — *but only if* they directly and solely provide the service to the tipping customer. Management may not hold on to tips received when they are assisting workers who regularly rely on tips.

For example, if a supervisor receives a tip after personally waiting on the table in a short-staffed restaurant, or personally styling the customer's hair, and so on, they can keep the tips they earned – assuming that no other tipped employee

helped wait on the table, style the hair, etc. If the supervisor is merely helping to run food to a table to aid the server, however, they cannot take a cut of the tip. This will be an important distinction to make while running an employer's operations when it comes to who gets the tip.

Manager & Supervisor Participation in Tip Pools

With respect to tip pools, while managers and supervisors may never receive tips from worker tip pools, they are not prohibited from contributing tips to eligible employees in such pools. So, for example, employers can require managers and supervisors to share a portion of their own tips with bussers, shampoo assistants, or anyone else in the tip pool – but management cannot receive tips from a tip pool or sharing arrangement.

The bottom line is that employers with tipped employees must take care to comply with the new regulations, especially given that the DOL appears to be particularly focused on tipped employees. One way for employers to protect themselves is to have a written compliant policy on how tipping is going to work for the establishment. Training on tipping practices amongst the employees is a plus as well. As always, questions regarding these issues should be directed to experienced labor and employment counsel.

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