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NEW TIPPING REGULATIONS WILL TAKE EFFECT MARCH 1, 2021

The Department of Labor has issued new tipping regulations, to take **effect on March 1**, that make a few significant changes, some of which may be advantageous to hospitality employers.

1. Employers *that do not take a tip credit* may now implement a mandatory tip pool that includes employees that do not customarily and regularly receive tips, such as cooks, dishwashers, and other back-of-house staff;
2. An employer that collects tips to facilitate a tip pool must distribute the tips at least as often as it pays wages;
3. Whether or not they take a tip credit, employers may not otherwise keep employees' tips for any purpose, including for sharing by any manager or supervisor in the tip pool;
4. The new regulations codify recent guidance regarding "related non-tipped duties" for which a tip credit may still be taken. In the past, an "80/20" rule established that tipped employees for whom a tip credit is taken could be assigned no more than 20% of their time to non-tipped but "related" tasks like preparing salads, taking reservations, preparing dining rooms for large parties, and similar chores. The new regulation cites the [O*Net website](#) regarding what tasks may be considered "related," even [mopping floors and cleaning bathrooms](#). The new rule eliminates the "80/20" standard in favor of a "reasonableness" test, i.e., the employer may take a tip credit for a "reasonable" time that an employee spends on such non-tipped tasks immediately before or after performing tipped duties.
5. New recordkeeping requirements have been imposed on employers that do not take a tip credit but collect employees' tips to operate a mandatory tip pool;¹ and

¹ In addition to the previous requirements established by 29 CFR § 516.2[a], employers must record (1) a "symbol, letter, or other notation" placed on the pay records identifying each employee who receives tips, and (2) the weekly or monthly amount reported by the employee, to the employer, of tips received [this may consist of reports made by the employees to the employer on IRS Form 4070].

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6. New civil money penalties may be imposed for violations of the tipping regulations, minimum wage, and overtime provisions, and the regulations define violations that are “repeated” [employer was previously informed by the Wage and Hour Division or through a final court proceeding that its conduct violated these provisions] or are “willful” [employer knew its conduct was prohibited by these provisions or showed reckless disregard for the FLSA’s requirements].

Restaurants need to make sure to be prepared for these changes, especially the recordkeeping requirements. There are some state and local regulations that might supersede some of these changes. Please make sure to follow all state and local regulations applicable in your area.

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