



STOKES WAGNER

ATTORNEYS AT LAW

ATLANTA • ITHACA • LOS ANGELES • PITTSBURGH • SAN DIEGO • SAN FRANCISCO

DOL's New Tip Rules Delayed

The U.S. Department of Labor has delayed for at least 60 days implementation of changes to the tip credit rules that would have taken effect on March 1. This delay cites the January 20, 2021, memorandum "Regulatory Freeze Pending Review," which directed the heads of Executive Departments and Agencies to consider delaying the effective dates of all regulations that had been published in the Federal Register but had not yet taken effect.

Among the new rules that have been delayed were provisions that most significantly would 1) allow employers not taking a tip credit to include employees that do not customarily and regularly receive tips (such as cooks, dishwashers, and other back-of-house staff) in mandatory tip pools; and 2) eliminate the "80/20" guideline establishing an outer limit of time that may be spent by tipped employees doing non-tipped tasks for an employer still to take a tip credit for that time, opting instead for a more vague "reasonableness" test.

Other changes that may or may not be implemented **after April 30, 2021**, are: 1) requirements that the employer distribute pooled tips at least as often as it pays wages; 2) prohibition against employers keeping tips for any purpose, including for sharing by any manager or supervisor in the tip pool; 3) reference to the [O*Net website](#) for purposes of establishing what non-tipped tasks may be considered "related" to tipped positions so as to permit an employer to take a tip credit for limited time spent on those tasks; 4) new recordkeeping requirements on employers that do not take a tip credit but collect employee tips to operate a mandatory tip pool; and 5) new civil money penalties for violations of the tipping regulations, minimum wage, and overtime provisions.

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Questions? Contact Stokes Wagner.