

## DOL Reverses Course on Tipped Employee Dual Jobs Rule

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The U.S. Department of Labor released a proposed rule this week aimed at providing more clarity to employers of tipped employees as to [when they can take a tip credit for non-tipped side work](#).

The proposed rule largely seeks to resurrect the pre-Trump administration "80/20 Rule" that governs how tipped employees must be paid under the Fair Labor Standards Act.

In Pennsylvania, employers may pay tipped workers as little as \$2.83/hour and may take a credit against the tips earned by employees to make up the balance of the minimum wage, which is currently \$7.25/hour. The proposed rule clarifies that employers may take this tip credit when employees are performing work that "directly supports" tip-producing work, but only if the work is not performed for a "substantial" amount of time.

Under the proposed rule, "directly supports" means work that assists a tipped employee in performing tipped work. This could be bartenders slicing fruit garnishes during slow times, servers cleaning a table or preparing silverware and folding napkins for their next customers, or nail technicians cleaning pedicure baths between customers.

"Substantial" means either:

- An employee engaged in directly supporting work for more than 20% of all their hours worked during the work week
- An employee engaged in directly supporting work for more than 30 continuous minutes

The proposed rule provides that the first 20% of a tipped employee's "directly supporting" work can be paid at the tip credit rate, but any time beyond 20% must be paid at least the current minimum wage. However, if a tipped employee spends more than 30 continuous minutes in "directly supporting" work, all of the continuous "directly supporting" time must be paid at least minimum wage.

It is important to note the difference between duties that directly support tipped work, - which are considered part of the tipped occupation - and unrelated duties that are not part of the employee's tipped occupation. Unrelated duties include preparing food and cleaning the bathroom - duties typically performed by chefs and maintenance workers. Any time spent performing unrelated duties must be paid at least the minimum wage of \$7.25/hour.

Companies in the restaurant, hospitality, salon and other industries that employ tipped employees who wish to comment on the proposed rule should [consider submitting comments to the DOL by the August 23 deadline](#).

If you have any questions about the proposed rule, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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