

DOL Updates Guidance Regarding the Tip Credit for Side Work

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Hospitality employers now have clearer guidance regarding the "tip credit" thanks to some updated policies from the U.S. Department of Labor.

The department's new guidance clarifies that whether the tip credit may be taken depends on the type of "side work," not how much time a tipped employee spends on those tasks. "Side work" refers to duties tipped employees must perform that are not directly related to waiting on customers. Now employers may use the tip credit for any amount of time spent on non-tip generating work, so long as those duties "are directly related" to the employees' "tip-producing duties."

This means restaurants may use the tip credit for any amount of time that servers spend for duties such as:

- Cleaning and setting tables
- Toasting bread
- Making coffee
- Removing dishes and glasses from a table
- Assisting the host station with phone reservations or to-go orders
- Cleaning duties
- Rolling silverware
- Stocking service areas
- Filling condiment containers

These duties, however, must be performed simultaneously with the tipped employees' tip-generating duties. An employer couldn't use the tip credit to pay an employee who only performed cleaning duties, without any responsibility for waiting on tables.

The tip credit is a special exception to the Fair Labor Standards Act that permits employers to pay significantly less than minimum wage (\$2.83 per hour in Pennsylvania) to employees who regularly receive tips.

Disputes frequently arise regarding whether employers may take the tip credit for time that tipped employees spend on side work. Previously, some courts held that employers couldn't take the tip credit for any side work that exceeded 20 percent of a tipped employee's total working time.

What about tipped employees who aren't restaurant servers? What duties "are directly related" to those employees' tip-producing duties? The Department of Labor will use the list of core or supplement duties for such positions found

on the department's [Occupational Information Network](#), or O*NET.

Employers also must ensure they satisfy all other requirements to take the tip credit. Among other things, employers may not take a tip credit that exceeds the amount of tips the employee actually collects. The employer must permit the employee to keep all tips collected, other than required contributions to a tip-pooling arrangement with other employees who regularly receive tips. And the employer must inform tipped employees, at the outset of their employment, that the employer will be taking tip credit, the direct cash wage that the employee will receive, the maximum amount of the tip credit the employer will take, and whether the employee will be required to contribute to a tip pool.

In light of the new guidance, now would be an ideal time for hospitality employers to have competent employment counsel review their tip credit practices. If you have any questions on these new standards, please [reach out to me](#).

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