

MAR 28 1980

79774/79.745

This is in reply to your letter of October 30, 1979, asking if certain duties performed by tipped employees in a restaurant after closing hours are considered to be tipped employee duties under the Fair Labor Standards Act.

You state the tipped employees clean the salad bar, place the condiment crocks in the cooler, clean and stock the waitress station, clean and reset the tables (including filling cheese, salt and pepper shakers) and vacuum the dining room carpet, after the restaurant is closed. It is your position that since the dining area is the domain of the waitresses and waiters, they are responsible for the duties described above. Accordingly, you believe the employer may use the tip credit provision when compensating the tipped employees for the time expended performing these duties.

As you know, section 531.56(e) of 29 CFR Part 531, deals with tipped employees who are performing dual jobs. This section explains that a waitress who spends part of her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses is not employed in two occupations. Further, such related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips. As indicated, however, where there is a clear dividing line between the types of duties performed by a tipped employee, such as between maintenance duties and waitress duties, no tip credit may be taken for the time spent by a waitress performing maintenance duties.

WH-19-IV tipped employee defined.

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Insofar as the after-hours clean-up you describe are assigned generally to the waitress/waiter staff, we believe that such duties constitute tipped employment within the meaning of the regulation. We might have a different opinion if the facts indicated that specific employees were routinely assigned, for example, maintenance-type work such as floor vacuuming.

Sincerely,

Henry T. White, Jr.

Henry White
Deputy Administrator