



U.S. Wage and Hour Division



In the Consolidated Appropriations Act, 2018 (Act), Congress vacated the Department's 2011 regulations that barred tip pooling when employers do not claim a tip credit under section 3(m) of the Fair Labor Standards Act. Statements in this document to the contrary are no longer WHD policy. The Act did not impact WHD's enforcement when an employer claims a tip credit. For further information, see [FAB 2018-3](#).

Wage and Hour Division

FLSA Clean-Up Tipped Employees

**U.S. Department of Labor
Wage and Hour Division**



Overview

The Fair Labor Standards Act (FLSA) requires employers to:

- Pay all covered nonexempt employees, for all hours worked, at least the Federal minimum wage of \$7.25 per hour
- Pay at least one and one-half times the employees' regular rates of pay for all hour worked over 40 in a workweek
- Comply with youth employment standards
- Comply with recordkeeping requirements

Section 3(m) of the FLSA permits an employer to take a tip credit towards its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13 per hour) and the Federal minimum wage.



U.S. Wage and Hour Division

Tip Credit

The employer must provide the following information to a tipped employee before the employer may use the tip credit:

1. the amount of cash wage the employer is paying a tipped employee (at least \$2.13);
2. the additional amount claimed by the employer as a tip credit (no more than \$5.12);
3. that the tip credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee;
4. that all tips received by the tipped employee are to be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and
5. that the tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.

The final rule deletes the regulation providing that an employee may petition the Wage and Hour Administrator to review the tip credit claimed by the employer. The language was also updated to reflect the burden on the employer to prove the amount of the tip credit to which it is entitled.



Technical Updates

The 2007 Amendment to the FLSA increased the minimum wage to \$7.25 per hour effective July 24, 2009. The technical updates to the regulations reflect the higher minimum wage.

This amendment made no changes to the tip credit formula in determining the wage paid to a qualifying tipped employee; therefore, the minimum required cash wage for a tipped employee under the FLSA remains \$2.13 per hour and the employer may take a credit for tips received up to the difference between the FLSA minimum wage (\$7.25) and the minimum cash wage (\$2.13).

Also, the final rule makes technical updates to the regulation based on the 1977 Amendment to section 3(t) of the FLSA, which defined a tipped employee as one who receives more than \$30 a month in tips.



Tips Are the Property of the Employee

The final rule makes clear that all tips received by the tipped employee must be retained by the employee, except where the employee is participating in a valid tip pooling arrangement limited to employees who customarily and regularly receive tips.

It also makes clear that the tip credit will not apply to any employee who has not been informed orally or in writing of the tip credit requirements.



Tip Pooling

The final rule adopts the view that section 3(m) of the FLSA does not impose a maximum contribution percentage on valid tip pools, which include only those employees who customarily and regularly receive tips. The employer, however, must notify its tipped employees of any required tip pool contribution amount.