

## Fact Sheet #15A: Ownership of Tips Under the Fair Labor Standards Act (FLSA)

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](#).

This fact sheet addresses ownership of tips by the employee under the FLSA.

**Tip Credit:** Section 3(m) of the [FLSA](#) permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13) and the federal minimum wage (currently \$7.25). Employers must provide oral or written notice to tipped employees of the use of the tip credit in advance. [29 C.F.R. § 531.59\(b\)](#). Employers using the tip credit must be able to show that tipped employees receive at least the minimum wage when direct wages and the tip credit amount are combined. If the employee's tips combined with the direct wages do not equal the minimum wage, the employer must make up the difference during the pay period. For general information on tipped employees, please see [Fact Sheet #15: Tipped Employees Under the FLSA](#).

**2011 Final Rule:** The Department's tip credit regulations were updated effective May 5, 2011 to codify the Wage and Hour Division's (WHD) longstanding position that:

Tips are the property of the employee whether or not the employer has taken a tip credit under section 3(m) of the FLSA.<sup>1</sup> The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than that which is statutorily permitted: As a credit against its wage obligations to the employee, or in furtherance of a valid tip pool.

[29 C.F.R. § 531.52](#).

Under the regulation, an employer that satisfies the requirements to take a tip credit may use an employee's tips only:

1. as a partial credit against its minimum wage obligation to the tipped employee, and/or
2. in furtherance of a valid tip pool.

Even if the employer does not take a tip credit, tips remain the property of the employee that received them and the employee cannot be required to turn over his or her tips to the employer. Similarly, the employer may not take the employee's tips to further an invalid tip pool, such as one that includes employees who do not customarily and regularly receive tips, like cooks, janitors, or dishwashers.

<sup>1</sup> WHD will not enforce the Department's regulations on the retention of employees' tips with respect to any employee who is paid a cash wage of not less than the full Fair Labor Standards Act (FLSA) minimum wage (\$7.25) and for whom their employer does not take an FLSA section 3(m) tip credit.

## **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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