

U.S. DOL Offers Employers Relief From The ‘80/20’ Tip Credit Rule

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In good news for employers, particularly those in the restaurant and hospitality industries, the U.S. Department of Labor (DOL) recently reissued a 2009 opinion letter that effectively abandons the “80/20” tip credit rule.

Under the Fair Labor Standards Act, an employer may pay tipped employees a direct wage lower than minimum wage and take a “credit” for the tips received by the employee to satisfy the remaining portion of the minimum wage. However, under the “80/20” rule, if tipped employees spent more than 20% of their time performing non-tip-generating duties, their employer may not take the tip credit for the time the tipped employees spent performing such duties.

Given the lack of guidance on the types of duties the DOL considered “tip-generating,” the “80/20” rule often caused confusion among employers and fueled employee litigation.

By abandoning the strict “80/20” rule and providing specific guidance regarding the duties that employees may perform without losing the tip credit, the recently reissued 2009 opinion letter offers welcome clarification to employers for 2019 and beyond.

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