

## As Predicted, DOL Proposes Changes To Tip Pool Rule

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As predicted in an [earlier post](#), the U.S. Department of Labor has issued a [Notice of Proposed Rulemaking](#) which would alter its 2011 rule on tip pooling. The 2011 rule prevented employers from requiring tipped employees from sharing their tips with traditionally non-tipped workers. Under the proposed rule, employers who directly pay tipped employees the full minimum wage may require those employees to pool their tips with traditionally non-tipped employees. The Fair Labor Standards Act (“FLSA”) generally requires employers to pay employees the minimum wage of \$7.25 per hour. However, the law also permits employers to pay tipped employees a lower direct wage (at least \$2.13 per hour) and allow the employees’ tips to make up the remainder of the minimum wage—which is known as a “tip credit.” The FLSA says that if an employer wants to take a “tip credit” for an employee, that employee may only pool his or her tips with other employees who “customarily and regularly receive tips.”

While the FLSA itself contained no limits on tip pooling when no tip credit was claimed, the 2011 rule expanded those limits to all tipped employees, even if the employer did not claim a tip credit. The proposed rule would continue to bar tipped employees from tip pooling with traditionally non-tipped employee when the employer intends to take a tip credit. If instead the employer will directly pay the tipped employee at least the full minimum wage, then tip pooling would be permitted. Initially, the Notice of Proposed Rulemaking allowed interested parties to submit comments until January 4, 2018. However, the DOL later expanded the comment period to February 5, 2018. Employers with tipped employees should continue to watch these developments as they may have more flexibility in the near future.

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