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U.S. Department of Labor Addresses Tips

Clarification Regarding Tip Pool Participation for Managers and Supervisors The U.S. Department of Labor (DOL) recently clarified the rules under which managers and supervisors can participate in a mandatory tip pool. In a [final rule](#) effective November 23, 2021, the DOL clarified that managers and supervisors are permitted to contribute tips to a mandatory tip pool but may not receive tips from the pool. The rule also clarifies that managers or supervisors may keep a tip only when the tip is based on a service the manager or supervisor directly and "solely" provides. Thus, when managers or supervisors directly receive tips for services they directly and solely provide, an employer may allow them to keep those tips. Alternatively, the employer may require the manager or supervisor to share some portion of the tips with other eligible employees. Finally, the rule also confirms that employers that pay their tipped employees the full minimum wage and do not take a tip credit can impose a tip pooling arrangement that includes employees who do not regularly receive tips.

Clarification Regarding Dual Jobs The DOL also [issued](#) a final rule, effective December 28, 2021. The DOL [provides](#) that "[u]nder the final rule, an employer can take a tip credit only when the tipped employee is performing tip-producing work or when the tipped employee is performing work that directly supports tip-producing work as long as the tipped worker does not spend a substantial amount of time doing tip-supporting work. The rule defines substantial amount of time as more than 20 percent of the hours worked during the employee's workweek or a continuous period of time that exceeds 30 minutes." * * * Employers with tipped employees should contact experienced counsel with questions.

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