



New requirements for employers who seek to claim tip credit

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A recent ruling by the U.S. Department of Labor with regards to tipped employees may have a dramatic impact on hoteliers, especially if a hotel fails to comply with its requirements. The ruling specifies that all employers must notify employees or forfeit tip credit on wages. This would affect hotels that seek to minimize the cash wages it pays directly to some employees such as bell persons, door persons, parking valets, concierges, room attendants, servers and bartenders as part of their weekly compensation.

The new updates to the Fair Labor Standards Act (29 CFR Part 4), which went into effect May 5, 2011, require that employers must comply with specific procedures if they seek to claim a tip credit for wages paid to employees who receive tips in addition to a cash wage. Many employers take up to a \$5.12 credit against the prevailing federal minimum wage of \$7.25 for employees that normally receive a substantial portion of their compensation as gratuities from guests. But to continue to take advantage of the tips credit, there are several requirements that employers must meet.

Tips credit regulations

Every employee for whom a tip credit is applied as part of his or her wages must be notified of the following:

- The cash wage being paid to him/her, which must be at least \$2.13 an hour (or higher depending on state law)
- The tip credit amount, which may not be greater than the difference between the minimum wage and the cash wage or the actual amount of tips received by the employee up to \$5.12 per hour (or less depending on state law)
- All tips must be retained by the employee, except in the case of a valid tip-pooling arrangement
- The credit will not apply to any employee who has not been informed of this information

Although the rule states that employers do not necessarily need to provide this information in writing, it strongly advises employers to do so in case they are called upon to prove they have complied. The employer may provide either oral or written notice to its tipped employees informing them of the aforementioned items. An employer who fails to provide the required information cannot use the tip credit provisions and therefore must pay the employee at least \$7.25/hour in wages and allow the employee to keep all tips received.

The Department of Labor has produced a fact sheet on the new rules. The fact sheet is included here as an insert.



State laws

In addition to complying with federal wage laws, employers must also comply with state laws that apply to tipped employees. It should also be noted that some states (e.g., New York) have enacted regulations requiring that employers notify employees *in writing* about their hourly wage and any tip credits being taken by the employer.



Some other states, (e.g., Alaska, California, Guam, Minnesota, Montana, Nevada, Oregon, and Washington) do not permit employers to take a tip-credit. Hence, employers in these states must pay the federal minimum wage of \$7.25/hour to their employees, unless state or local laws require a higher amount be paid. In some states, other additional deductions are permitted for meals, lodging, and similar expenses incurred by the employer on behalf of the employee.

Wages for tipped employees in specific states can be found at the U.S. Department of Labor Wage and Hour Division website: <http://www.dol.gov/whd/state/tipped.htm>.

What hoteliers can expect

Hoteliers can expect that these updated wage regulations will be enforced vigorously by both federal and state labor department personnel. Hotels with unionized personnel can also expect greater scrutiny and increased oversight on wage matters from the labor unions that represent their workforce. Finally, any form of non-compliance by employers may also result in the emergence of civil suits and requests for back pay and punitive damages by attorneys representing disaffected workers. The monetary consequences and negative publicity are too onerous for employers not to educate themselves on this important matter. ✧

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