

DOL Confirms Supervisors Cannot Participate in Tip Pools

On Sept. 7, 2026, the U.S. Department of Labor (DOL) issued Opinion Letter [FLSA2026-13](#), addressing whether the Fair Labor Standards Act (FLSA) allows a restaurant supervisor to keep a portion of other employees' tips when also working as a bartender and assisting other employees.

HIGHLIGHTS

- On Sept. 7, 2026, the DOL issued Opinion Letter FLSA2026-13, addressing whether the FLSA allows a restaurant supervisor to keep a portion of other employees' tips when also working as a bartender and assisting other employees.
- The DOL confirmed that if an employee satisfies the executive duties requirements, they are prohibited from receiving any portion of tips from other employees, even if the employee also performs work as a bartender.

Background

The FLSA generally requires employers to pay nonexempt employees at least the federal minimum wage for every hour worked and 1.5 times their regular rate of pay for each hour worked over 40 in a workweek. The FLSA allows employers to take a tip credit toward their minimum wage and overtime obligations for tipped employees. **"Tipped employees"** are those engaged in occupations in which they customarily and regularly receive more than \$30 a month in tips, whether they are full-time, part-time, permanent or temporary employees. This credit permits employers to pay their tipped employees cash wages equal to the difference between the minimum wage rate and the tip credit. The FLSA requires that employers pay tipped workers at least \$2.13 per hour. An employer can take an FLSA tip credit equal to the difference between the cash wage it pays directly to the tipped employee and the federal minimum wage, which is currently \$7.25 per hour. The maximum tip credit an employer can currently claim is \$5.12 per hour. If an employee's tips combined with their cash wages do not equal the minimum hourly wage of \$7.25 per hour in each workweek, the employer must pay the difference to ensure the employee receives at least the federal minimum wage rate.

Tips belong to the employee who receives them. However, the FLSA permits employers to require employees to share, or "pool," tips with other eligible employees. Pooled tips are considered the property of the employees who ultimately receive them, not of those who contribute them to the pool. Employers may not allow managers and supervisors to receive tips from the pool. However, managers and supervisors may keep any tips they receive directly from customers for the service they provide directly and solely. DOL regulations define "manager" or "supervisor" as any employee whose duties match those of an executive employee exempt from the FLSA's minimum wage and overtime requirements. The fact that a manager or supervisor also performs nonmanagerial duties does not alter whether they satisfy the FLSA's executive employee duties test.

Penalties for FLSA tip regulation violations include permitting employees to recover tips improperly kept by managers or supervisors and disallowing employers to take a tip credit for any affected tipped employee whose tips were improperly kept by the manager or supervisor.

Key Highlights

The employee at issue primarily performed management duties but periodically worked bartending shifts. During their bartending shifts, the employee performed management functions, such as determining when employees' shifts end, developing schedules and other managerial tasks. When the employee worked as a bartender, they would share tips with servers, hosts and bussers. The restaurant had a tip pooling arrangement that

required servers to share tips with bartenders, hosts and bussers based on a percentage of sales.

The DOL confirmed that if an employee satisfies the executive duties requirements, they are prohibited from receiving any portion of tips from other employees, even if the employee also performs work as a bartender or contributes to the pool. However, the supervisor may retain any tips received directly from customers for services they provided directly and solely (e.g., tips left by bar customers during the period in which the supervisor is bartending). However, if the supervisor's tips are pooled among multiple bartenders working the same shift so that no individual tip can be traced to the employee's own service, the supervisor can no longer share in the tip pool.

The DOL noted that it lacked sufficient information to determine whether the employee at issue satisfied any of the FLSA's executive duties criteria. However, for the purpose of the opinion letter, the DOL assumed that the employee satisfied the executive duties test.

Employer Takeaway

Opinion letters provide the DOL's official position on how labor and employment standards apply in specific situations. Employers that rely on opinion letters may be able to establish a "good-faith defense" under the law. Employers should review the scenarios discussed in the opinion letter and determine whether the guidance affects their employment or payroll practices. This opinion letter confirms that an employee who satisfies the executive duties requirements is prohibited from receiving any portion of tips from other employees, including any tips for tip pools to which the employee contributes.