

More time to weigh in on new tip pool rule

The Department of Labor has extended the deadline to comment on proposed tip pool rule changes to February 5, 2018. The original deadline was Jan. 3.

Since amendments to the Fair Labor Standards Act back in 1974, the DOL has consistently considered a tip paid to an employee such as a restaurant server, banquet worker or bartender to be a gift from the tipper and the property of the worker who received it.

During the Obama administration, the DOL instituted a rule that barred employers from forcing tipped workers to share their tips with back-of-the-house workers.

Employers and trade groups challenged the regulation in court, arguing that employers should be allowed to require sharing tips with others who have traditionally not been considered tipped workers, such as cooks and dishwashers.

Federal courts offered conflicting rulings on the issue. Some courts concluded that tip pooling only applies to employees whose employers did not take the tip credit against the minimum wage. One federal court even decided business owners could take tips and use them as they want—including keeping them for themselves.

Enter the Trump DOL. Its new proposed regulations would let employers control tips, and make it OK to require tip pooling as long as they paid at least the minimum wage.

The comment period was extended partly because the proposal has garnered lots of press, mostly negative.

Some worker advocates claim the proposed regulations, as written, would not limit tip pools to employers that eschew the tip credit and pay tipped workers at least the minimum wage.

Others raised the alarm about owners confiscating tips and refusing to distribute them to the employees for whom they were intended. In theory, they say, waiters and bartenders could be stiffed while managers and owners lined their own pockets.

What's next? The DOL will review comments and may revise its proposed regulations in response. Look for final regulations sometime in mid to late 2018.

Read the proposed rule and learn how to file comments on it at www.dol.gov/WHD/flsa/tipcreditnprm.htm.