



HR Heads-up

Department of Labor Issues Guidance on When Managers May Keep Tips From Tip Pools

STORM B. LARSON 01.22.25

On January 14, 2025, the federal Department of Labor (DOL) issued guidance that clarifies that managers and supervisors may *not* receive tips from a tip pool under the Fair Labor Standards Act (FLSA) even if they clock in and work a shift as a non-supervisor. This guidance is consistent with the DOL’s existing position and laws that state that managers and supervisors may keep tips *only if* they are received from customers as a result of services that the manager or supervisor “directly and solely” provided. It is also consistent with the DOL’s existing position that managers and supervisors may not receive tips from a tip pool.

This guidance is helpful because it clarifies for employers that an individual’s status as a manager or supervisor for FLSA tipping purposes is not affected by a shift which is worked in a non-supervisory capacity. Federal law defines “manager” and “supervisor” as someone who meets the FLSA’s Executive Duties Test. To meet that test, an individual must:

1. customarily and regularly direct the work of at least two or more other full-time employees or their equivalent;
2. have the authority to hire or fire other employees, or their suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight; and
3. have a primary duty of managing the enterprise or a customarily recognized department or subdivision of the enterprise.

The FLSA also states that certain business owners who own at least a bona fide 20% equity interest in the enterprise and who are actively engaged in its management qualify as a “manager” or “supervisor.”

This guidance is an important reminder because many businesses rely on managers and supervisors to fill in for shifts when a tipped employee calls in last minute for a shift or when there are not enough employees to staff an enterprise. Wage and hour rules are complex and frequently involve a fact-dependent analysis. Therefore, we encourage employers to reach out with questions to a member of the Boardman Clark [Labor and Employment Practice Group](#).

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

Author

Storm B. Larson
(608) 286-7207