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DOL Issues Opinion Letter About Managers Receiving Tip-pool Tips for Nonsupervisory Work

On **Jan. 14, 2025**, the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) issued opinion letter [FLSA2025-1](#), addressing whether a manager or supervisor can receive tips from a tip pool when working in a nonsupervisory capacity under the Fair Labor Standards Act (FLSA). The WHD advises that employers may not allow managers or supervisors to keep any portion of other employees' tips, including from a tip pool.

Background

Under the FLSA, a manager or supervisor is an employee who meets the executive employee duties test. To qualify for the executive employee exemption, an employee must meet all of the following requirements:

- The employee's primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement or promotion must be given particular weight.

The primary duty test is based on the employee's duties on a workweek basis or whatever longer period is appropriate to capture the character of the employee's job as a whole. Section 3(m)(2)(B) of the FLSA prohibits employers from allowing managers or supervisors to keep any portion of employees' tips. A manager or supervisor may keep tips they receive directly from customers based on the service the manager or supervisor directly and solely provides.

Managers Receiving Tips From the Employer's Tip Pool

According to the WHD, an employee who meets the executive employee duties test qualifies as a manager or supervisor for purposes of Section 3(m)(2)(B) and must not receive any tips from an employer-mandated tip pool even if they spend a shift performing nonmanagerial duties. This is because an employee's primary duty is determined on at least a workweek basis and does not vary from shift to shift. However, if an employee does not meet the executive duties test, even if they are the most senior employee during a particular shift, they may receive tips from an employer-mandated tip pool.

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. Therefore, employers should review the scenario discussed in this opinion letter and determine whether this new guidance affects their current employment and payroll practices.

Provided by Salus Group

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