**U.S. Department of Labor**

Wage and Hour Division
Washington, D.C. 20210

**FLSA2026-13**

September 7, 2026

Dear **Name***:

This letter responds to your request for an opinion regarding whether the Fair Labor Standards Act (FLSA or Act) allows a restaurant supervisor to keep a portion of other employees' tips when also working as a bartender and assisting other employees.

It is our opinion, based on the circumstances presented and facts assumed below, that section 3(m)(2)(B) of the FLSA prohibits a supervisor in your workplace from keeping any portion of other employees' tips, regardless of whether the supervisor also works as a bartender or assists other employees.

## BACKGROUND

The restaurant where you are employed as a server has a tip pooling arrangement.[1] Under this arrangement, servers are required to "tip out" (*i.e.*, share) amounts based on a percentage of sales to bartenders, hosts, and bussers. You ask about a particular employee, implying that they primarily perform management duties. In addition, the employee periodically works bartending shifts in which "they carry out all usual bartending duties." During these shifts the employee also performs management functions, including determining when employees' shifts end, developing schedules, and other managerial tasks. You describe this employee's title as a "shift supervisor."

When this employee works a bartending shift, he or she collects a "tip out" from the servers. You further state that this employee often assists the hosts and bussers while also performing managerial tasks and collects a portion of the "tip out" intended for hosts or bussers as well. You ask whether the employee can receive a portion of other employees' tips through the employer's "tip out" arrangement when bartending or assisting hosts and bussers while also serving as a "shift supervisor."

## GENERAL LEGAL PRINCIPLES

The FLSA generally requires covered employers to pay employees at least the federal minimum wage for all hours worked and overtime of at least one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek. 29 U.S.C. §§ 206(a), 207(a). However, special provisions apply to employees who receive tips. *Id.* § 203(m)(2), (t).

[1] The Wage and Hour Division (WHD or Division) uses the term "tip pool" for any scenario in which a tip provided by a customer is shared in whole or in part between employees. The Division recognizes, however, that in some workplaces or under state laws, the term "tip pooling" may refer to a narrower set of practices, and that employers and workers may use other terms—for example, "tip out" or "tip sharing"—to describe certain practices regarding tips. Regardless of the terms used, when determining whether an employer's tip practices comply with the FLSA, the analysis is the same.

## A. Tip Provisions of the Act

The Act defines a "tipped employee" as "any employee engaged in an occupation in which he customarily and regularly receives . . . tips." *Id.* § 203(t). A "tip" is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer and is distinct from a service charge or similar amounts that are compulsory charges imposed on a customer by an employer. 29 C.F.R. § 531.52(a), 531.55. Although the minimum wage requirement for tipped employees is the amount set forth in 29 U.S.C. § 206(a)(1), the Act permits an employer to satisfy that requirement by paying a cash wage of at least $2.13 per hour and counting—as a "credit" toward its section 6 obligation—up to $5.12 per hour (the difference between the cash wage and the minimum wage of $7.25) from the tips received by the employee. *See* 29 U.S.C. § 203(m)(2)(A); 29 C.F.R. § 531.56. To claim the tip credit, an employer must inform the tipped employee of requirements of section 3(m)(2) of the Act and ensure that all tips received by that employee are retained by him or her, other than in a lawful tip pool. 29 U.S.C. § 203(m)(2)(A)(ii); 29 C.F.R. § 531.59.

## B. "Keeping" of Tips

In 2018, Congress enacted the Consolidated Appropriations Act (CAA), which reorganized section 3(m) of the FLSA and amended it to prohibit an "employer," regardless of whether it claims a tip credit, from keeping employees' tips "for any purposes," including allowing a "manager" or "supervisor" employed by the employer from keeping tips received by other employees. Pub. L. 115-141, § 1201, 132 Stat. 348, 1148–49 (2018); 29 U.S.C. § 203(m)(2)(B). WHD regulations further clarify that an employer may not receive tips from a tip pool and may not allow supervisors or managers to receive tips from the tip pool. *See* 29 C.F.R. §§ 531.52(b); 531.54(b), (c)(3), and (d).

However, section 3(m)(2)(B) permits a manager or supervisor to keep any tips that he or she receives directly from customers based on the service the manager or supervisor directly and solely provides. *See id.* § 531.52(b)(2). For example, a salon manager may keep tips left by customers whose hair she personally styles. *See* 85 Fed. Reg. 86756, 86764 (Dec. 30, 2020).

## C. Defining a "Manager or Supervisor" under the FLSA Tips Provisions

The Department's regulations implementing section 3(m)(2)(B) define the phrase "manager or supervisor" to encompass any employee "whose duties match" those of an "executive employee" exempt from the minimum wage and overtime requirements pursuant to section 13(a)(1), as set forth in 29 C.F.R. § 541.100(a)(2)–(4) or § 541.101. *Id*. § 531.52(b)(2).[2] In other words, the Department borrowed the familiar duties requirements of the executive *exemption* and put them

[2] The salary requirements in 29 C.F.R. § 541.100 and Subpart G do not apply when determining whether an employee is a manager or supervisor for purposes of section 3(m)(2)(B). *Id*. § 531.52(b)(2); WHD Field Operations Handbook (FOH) 30d02(e). Thus, a manager or supervisor need not be classified as exempt under § 541.100 to meet the definition of a "manager or supervisor" for purposes of 29 C.F.R. § 531.52(b)(2). Rather, their duties need only match those of an executive employee eligible for the § 541.100 exemption. As we noted in WHD Op. Ltr. FLSA2026-1 (Jan. 5, 2026), the FLSA only prohibits misclassification of a nonexempt employee as exempt, and employers are not legally required to classify any employee as exempt, even if they meet all necessary requirements for an exemption.

to a secondary and different use as the operational *definition* of "managers or supervisors" in the specific context of section 3(m)(2)(B). When evaluating whether an employee meets the definition, an employee's actual duties and responsibilities (not his or her job title) determine whether the employee is a "manager or supervisor" prohibited from participating in a tip pool or otherwise keeping other employees' tips. *See* 29 C.F.R. § 541.2.

The components of the executive duties test that comprise the definition of the phrase "manager or supervisor" call for an employee to: (i) have a primary duty of managing the enterprise or a customarily recognized department or subdivision of the enterprise; (ii) customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and (iii) have the authority to hire or fire other employees, or his or her suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight. *Id.* § 541.100(a)(2)–(4). Also included are individuals who own at least a bona fide 20 percent equity interest in the enterprise in which they are employed and who are actively engaged in its management.[3] *Id.* § 541.101.

## D. When Managers or Supervisors Perform Tipped Work

An employee who satisfies the executive duties test is a "manager or supervisor" for purposes of section 3(m)(2)(B). The fact that the manager or supervisor also performs non-managerial duties—including in a tipped occupation such as a server or bartender or alongside the employees he or she manages—does not alter that conclusion, so long as the manager's or supervisor's duties continue to match those set forth in the executive duties test. FOH 30d02(e)(1). As a manager or supervisor for purposes of section 3(m)(2)(B), he or she may not keep any portion of other employees' tips. *See* 29 C.F.R. § 531.52(b)(2). This includes receiving tips from a tip pool. *See id.* § 531.54(c)(3).

Section 3(m)(2)(B), however, does not prohibit an employer from requiring a manager or supervisor who receives tips directly from customers to contribute some portion of those tips to eligible employees in an employer-mandated tip pooling or tip sharing arrangement. *See id.* § 531.54(b)(1). In addition, the regulations allow managers or supervisors to keep tips given directly to them for service that they directly and solely provide. *See id.* § 531.52(b)(2).

## OPINION

In your request, you ask if an employee, whose title is "shift supervisor," and who also works as a bartender or assists other employees (*i.e.*, hosts and bussers), can keep a portion of other

[3] As explained above, elements of the duties analysis for the executive exemption operate in the familiar Part 541 exemption framework for section 13(a)(1) and also in a separate definitional capacity for purposes of section 3(m)(2)(B)'s provision on keeping tips. It is important to note, however, that differences in the elements of the exemption and the definition, their purposes and functions, and the varying analytic frameworks mean that different results may attend to the same employee in both contexts. Although an employee who is properly an exempt executive will also meet the narrower included definition of manager or supervisor under section 3(m)(2)(B) during the same period, it is certainly possible that an individual might meet the definition of manager or supervisor but not satisfy all the elements of the exemption. *Compare* 29 C.F.R. Part 541, Subpart B *with* 29 C.F.R. § 541.100(a)(2)–(4) or § 541.101.

employees' tips through tip pooling.[4] You describe the employee performing a number of managerial tasks; however, we lack sufficient information to determine conclusively whether the employee satisfies any of the executive duties criteria described above. For example, you do not provide information about the employee's role in the hiring, firing, or promotion of other employees. WHD assumes for the purposes of this letter, based on the employee's shifts working as a supervisor and a bartender, that the employee satisfies the "executive" duties requirements of 29 C.F.R. § 541.100(a)(2)–(4) and, therefore, is a manager or supervisor for purposes of section 3(m)(2)(B) of the Act. *Id*. § 531.52(b)(2).

If the employee satisfies the "executive" duties requirements of 29 C.F.R. § 541.100(a)(2)–(4) and is therefore a supervisor for purposes of section 3(m)(2)(B), he or she is prohibited from receiving any portion of tips from other employees—even if he or she also works bartending shifts alongside other employees or assists other employees performing tipped work. *See* 29 U.S.C. § 203(m)(2)(B); 29 C.F.R. §§ 531.52, 531.54(b)(1).[5] This includes receiving other employees' tips from a "tip out," such as you describe in your request, or from a tip pool to which the manager is otherwise required to contribute.

The employee may, however, retain any tips received directly from customers for service the supervisor "directly and solely" provided. 29 C.F.R. § 531.52(b)(2). For example, when the employee at issue tends the bar, the employee may keep tips left by his bar customers during the period in which he is bartending. There, the tips are left for the services the employee solely and directly provided. *See, e.g.*, WHD Op. Ltr. FLSA2024-02 (Dec. 18, 2024). If, however, the employee's tips and other bartenders' tips are consolidated and split among all bartenders working that shift, and therefore it is not possible to attribute the tip solely to the supervisor, the supervisor is not permitted to take any portion of those tips. *See* 29 C.F.R. § 531.52(b)(2).

The following examples illustrate these principles:

> Example #1: The manager at a restaurant meets the executive duties test. During a busy period, she pitches in to help servers and bussers serve the restaurant's customers. The restaurant manager may not keep any portion of the tips the customers provide to the servers or bussers because it is not possible to attribute the tips solely to the service she provides. If, however, she covers a few tables because a server called out sick, she may keep the tips given to her by customers at those tables for services that she performed.
>
> Example #2: An employee works at a coffee shop with a tip jar and point-of-sale system that allows for customer tipping. Though designated a barista by his employer, who is the owner of the shop but often travels to other coffee shops for many weeks at a time and is rarely onsite, the employee regularly directs the work of the coffee shop staff. This includes

[4] Your request does not present the converse situation and question: where an employee who principally works as a bartender or server also works occasional shifts or days in a managerial capacity or function. We do not address that situation in this opinion letter.

[5] If at some point, the supervisor no longer satisfies the duties requirements in 29 C.F.R. §§ 541.100(a)(2)–(4) or § 541.101, then the employee would no longer be a "manager" or "supervisor" for purposes of section 3(m)(2)(B), regardless of his or her title. As a result, the employee would not be subject to the Act's prohibition on managers and supervisors keeping other employees' tips. For example, an employee whose primary duty is bartending or serving, rather than management, would not satisfy the executive duties test.

assigning work to cashiers, bussers, and other baristas. He is also responsible for the store inventory and ordering, schedules worker shifts, and helps interview and hire job applicants. Although the employee does not have a formal title of a manager or supervisor, he meets the executive duties test and therefore is a manager or supervisor for purposes of section 3(m)(2)(B). Accordingly, he may not keep any portion of the tips the customers provide because it is not possible to attribute the tips solely to the service the employee provides.

Notably, in 2018, Congress created separate penalties that apply to violations of section 3(m)(2)(B). These penalties not only include recovery of the tips the supervisor "kept," but the concurrent disallowance of the tip credit (if applicable) for any affected tipped employees whose tips the supervisor improperly kept. *See* 29 U.S.C. § 216(b)–(c).

This letter is an official interpretation of the governing statutes and regulations by the Administrator of the Wage and Hour Division of the United States Department of Labor for purposes of the Portal-to-Portal Act. *See* 29 U.S.C. § 259. This interpretation may be relied upon in accordance with section 10 of the Portal-to-Portal Act, notwithstanding that after any such act or omission in the course of such reliance, the interpretation is "modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." *Id.*

We trust that this letter is responsive to your inquiry.

Sincerely,

Andrew B. Rogers
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request. This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.