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### **DOL Announces Proposed Rulemaking to Protect Tipped Workers**

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The U.S. Department of Labor announced a [notice of proposed rulemaking](#) that would limit the amount of non-tip producing work a tipped employee can perform when an employer is taking a tip credit. The proposed rule clarifies when a tipped employee has performed such a substantial amount of non-tipped labor that an employer can no longer take a tip credit and would be required to pay the full federal minimum wage to the employee. Therefore, the employer cannot take a tip credit for non-tipped work. Any work that produces tips, such as waiting on tables, as well as labor performed by the server that directly supports tip-producing work including folding napkins or refilling salt and pepper shakers, is considered tipped work.

The [Fair Labor Standards Act](#) allows employers to pay as little as \$2.13 per hour in direct wages to tipped workers, while taking a credit against the tips earned by the employee to make up the balance of the federal minimum wage of \$7.25 per hour.

The proposed rule would also clarify that if an employee performed work that directly supported tip-producing work for a substantial amount of time – which either exceeded 20 percent of all of the hours worked during the employee’s workweek or exceeded 30 continuous minutes – that worker was no longer performing work that is part of the tipped occupation.

The department invites comments from the public on the proposed rule at [www.regulations.gov](http://www.regulations.gov). The comment period closes August 23, 2021.

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