

Employers with tipped employees

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Employers increasingly face wage and hour enforcement actions and costly class action lawsuits under the federal and state laws that regulate minimum wages and tipping. With wide variations in federal and state requirements regarding tip credits, tip pooling and service charges, companies must carefully review their policies to avoid labor department investigations and significant liabilities for back pay, according to a recent study published in *Compensation & Benefits Review*.

Terrence Robinson, the [labor](#) and [employment](#) attorney who authored the article, details federal and state laws governing the tip credit – the amount of tips that may be applied toward the required minimum wage. He also outlines common employer practices and pitfalls in calculating pay and overtime pay for tipped employees and keeping records for wages and hours.

"With plaintiffs' lawyers seeing dollar signs in the plethora of recent wage and hour collective actions, they were bound to start looking at tip credit and tip-pooling issues," Robinson notes. "Employers can no longer simply hope that they are handling tips correctly or at least in a way that avoids a Department of Labor investigation."

Under current federal law, employers may apply a maximum tip credit of \$5.12 toward the federal minimum wage of \$7.25. Robinson explains, however, that employers must first understand what constitutes "tips," which employees count as "tipped employees," and how to deal with employees who engage in both tipped work and work that is not tipped. Overtime hours, record-keeping requirements, tip pooling and tip

sharing arrangements further complicate compliance issues and increase potential legal exposure. Employers must also comply with [state laws](#).

Robinson also notes that the Department of Labor has recently issued a long-awaited amendment to this regulation which specifies that the employers have to provide to the employees much more explanation than a simple notice. This regulation has resulted in the National Restaurant Association, Council of State Restaurant Associations and National Federation of Independent Business filing suit against the U.S. Department of Labor over this amended Fair Labor Standards Act regulation.

To avoid lawsuits that can generate multi-million-dollar settlements, Robinson outlines a number of steps that employers can take to ensure that their pay practices are legal.

More information: Find out more by reading the article, "A Comprehensive Look at the Tip Wage" by Terrence Bouvier Robinson in Compensation & Benefits Review (CBR). The article is available free for a limited time at: cbr.sagepub.com/content/43/4/214.full.pdf+html

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