

# ARE YOU PROPERLY PAYING YOUR BELL STAFF? 5 TOP QUESTIONS FOR HOTELS THAT TAKE A TIP CREDIT

Insights  
Sep 13, 2023

Hotel staff often include a mix of tipped and non-tipped jobs, but following wage and hour rules isn't always easy, particularly if employees perform a variety of tasks. Some workers — such as servers and bartenders — may neatly fit into the “tipped employee” category, but you may have more difficulty determining whether other workers — such as bell staff — are truly tipped employees. Why does it matter? For one thing, strict rules apply for employers that take a so-called “tip credit” and pay tipped workers less than the standard minimum wage. For another, recent rules from the Department of Labor (DOL) have caused more challenges for hospitality businesses utilizing the tip-credit method of wage payments. So, what does the DOL say about bell staff and how should you evaluate the role under current rules? Here are the answers to your top five questions.

## 1. Can Bell Staff Participate in a Tip Pool?

The federal Fair Labor Standards Act (FLSA) permits employers to take a so-called “tip credit” and pay employees who traditionally receive tips less than the federal minimum wage, so long as employees make up the difference in tips received and the employer follows certain other requirements. Specifically, tipped workers may be paid \$2.13 an hour under federal law, while the standard minimum wage is \$7.25.

The FLSA defines a “tipped employee” as “any employee engaged in an occupation in which [they] customarily and regularly receives more than \$30 a month in tips.” If you

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take a tip credit, only tipped employees may participate in a tip pool.

Does this include bell staff? Generally, yes. Over the years, the DOL has said that servers, bell staff, counter personnel serving customers, and service bartenders are among the kinds of hotel employees who may participate in a traditional tip pool. So, this means bell staff who greet guests and assist them with their luggage for tips typically may participate in a traditional tip pool if the appropriate criteria for tipped employees are met. You should note, however, that non-tipped employees may participate in a tip pool only when tipped employees receive the full minimum wage.

## 2. How Does the 80/20 Rule Apply to Bell Staff?

The DOL's Wage and Hour Division reinstated the infamous "80/20 Rule" in December 2021, amending the tip provisions of the FLSA regarding when hospitality employers with tipped employees may take a tip credit and modifying the definition of work that is considered part of a tipped occupation.

Under the 80/20 rule, employers lose the tip credit for the time spent performing "directly supporting work" (i.e., side-work) that exceeds 20% of their total hours worked at the tipped rate. For a bell staff employee, such side work might include organizing the luggage room and any other work that is not assisting the guests.

The DOL also added a provision that raises more challenges for employers: an employer loses the tip credit for the time a tipped employee performs directly supporting work for a continuous period that exceeds 30 minutes. This is true even if the continuous time spent on this work amounts to less than 20% of the employee's total work for the week.

***How might this rule apply to typical bell staff?*** The DOL provides the following example of a bell person who works 35 hours a week at a hotel:

- Their tip-producing work involves assisting guests with luggage and hotel amenities and assisting guests with directions.
- When the bell person is not assisting guests, they perform directly supporting work, which includes attending the



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main entrance door, welcoming guests, and rearranging the luggage storage area.

In the DOL's example, the bell person performed directly supporting work for no more than 20 minutes at a time and for no more than five hours a week (which is less than 20% of their total hours for the week). Thus, the employer could take the tip credit for the directly supporting work.

### **3. What If Bell Staff Perform Unrelated, Non-Tipped Work?**

If a bell person performs work that does not produce tips or directly support tipped work, to the employer must pay them at least the standard minimum wage for those hours.

In the DOL's example, the bell person also was directed to retrieve food trays from outside guest rooms at the end of each shift — and they spent 2.5 hours a week on this task. According to the DOL, the employer must pay a direct cash wage of at least the minimum wage for the 2.5 hours the employee performs this work since the employee was “not engaged in the tipped occupation of a bell staff when performing the work of retrieving trays from guest rooms.”

### **4. What Additional Rules May Apply?**

Many states have minimum wage rates that are higher than the federal level. Additionally, some states have different requirements relating specifically to tips – with some prohibiting use of the tip credit altogether – so check state law before doing anything else.

### **5. What Are Some Best Practices for Hotels that Take a Tip Credit?**

- If taking a tip credit, make sure a proper tip credit notice — ideally in writing — has been provided to the employees.
- Review your policies and consider including a provision that limits the amount of “directly supporting work” that can be performed to 30 consecutive minutes. Moreover, avoid scheduling “directly supporting work” for periods longer than 30 minutes.
- Review opening and closing procedures to avoid tipped employees spending lengthy periods of time not assisting guests.

- Ensure you have a timekeeping system that can track the time tipped employees are engaged in tipped work and side-work.
- Implement paperwork that requires employees to report excess “directly supporting work.”
- Consider requiring an attestation from the employees affirming whether they performed side-work and how long they performed it.
- Consider paying the full minimum wage for all “directly supporting work” to simplify compliance.
- Identify all employees who may arguably be considered a “manager” and ensure they are not participating in any tip pools.
- Train managers on the rule and the different categories of work to ensure the employees are tracking their work properly.

## Conclusion

If you have any doubt as to whether you are compliant with the rule, reach out to your Fisher Phillips attorney, the authors of this Insight, or any attorney in Fisher Phillips’ [Hospitality Industry Team](#) or [Wage and Hour Practice Group](#). Make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information, as we will continue to monitor this situation and provide updates as appropriate.