



# FLSA Amendment Bans Employers From "Keeping" Tips

Insights

3.23.18

In the budget reconciliation bill passed early this morning, Congress included a rider amending the federal Fair Labor Standards Act (FLSA) Section 3(m) to state,

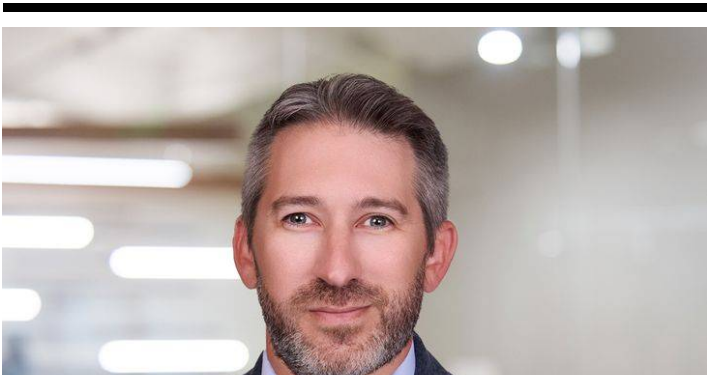
An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips, regardless of whether or not the employer takes a tip credit.

The law, which has now been signed, also changed FLSA penalty provisions to correspond with this expansion. Furthermore, it provided that the U.S. Department of Labor (USDOL) regulations from 2011 "shall have no further force or effect" to the extent that portions do not address Section 3(m) as it existed *at the time*.

Following the Obama Administration's 2011 regulation changes, there has been a focus on whether the USDOL could regulate the retention of tips with respect to an employee for whom *no tip credit* was taken. As we reiterated recently, such a restriction must come from Congress rather than USDOL, absent some authority. Even so, we anticipate that the USDOL will issue guidance regarding the effect of these changes, the expanse of which remains to be seen.

We will of course analyze this development further as additional information is provided, but as a best practice we recommend ceasing arrangements where a manager, supervisor, or employer retains any portion of an employee's tips.

## Related People





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