

# TIP CREDIT TIPS AHEAD OF THE SUMMER SEASON: 4 REMINDERS + STEPS TO PREPARE

Insights  
Apr 6, 2026

## Tip Credit Tips Ahead of the Summer Season: 4 Reminders + Steps to Prepare

With warmer weather and school breaks just around the corner, businesses are starting to ramp up hiring for the summer season. For hotels, restaurants, and other hospitality businesses, this also means navigating an ever-changing landscape of laws regarding the tip credit and gratuities. Before you start your summer hiring, be sure you're up to speed on what's allowed and what new restrictions may impact your business. This Insight will cover everything you need to know ahead of summer 2026.

### A Refresher on the Tip Credit

Federal wage and hour rules currently allow employers to take what's known as the "tip credit" towards the \$7.25 hourly minimum wage they are required to pay their employees. Workers who traditionally receive \$30 a month in tips – such as servers, bartenders, or valets – can be paid as little as \$2.13 an hour, so long as they make at least the standard minimum wage (\$7.25 an hour) when tips are factored in. Not every state follows the federal rules, so make sure to check each state's rules on tipped employees as well.

An employer that takes a tip credit may require employees to pool tips, but there are limitations as to which workers can be included. The Department of Labor [recognizes two types](#) of pooling arrangements

## Related People



**Ted Boehm**

Partner

[404.240.4286](tel:404.240.4286)



**Marty Heller**

Partner

[404.231.1400](tel:404.231.1400)

- **“Traditional” Tip Pooling:** a tip pool limited only to employees working in positions that **“customarily and regularly receive tips.”** These jobs can include: “waiters, bellhops, counter personnel (who serve customers), bussers, and service bartenders.”
- **“Other” Tip Pooling:** a tip pool that includes both tipped and non-tipped employees (such as dishwashers and cooks) who all receive the full \$7.25 federal minimum wage per hour. Employers that set up these “nontraditional” tip pools are prohibited from taking the tip credit and therefore must pay all participants the full minimum wage.

**In either arrangement, owners, managers and supervisors are strictly prohibited from participating in the tip pool.**

### **Time Limits on Side Work**

The rules on how much time tipped workers may spend on “side work” when employers take a tip credit have gone back and forth in recent years. The DOL historically relied on the **80/20 rule**. Under that standard, a worker who spends more than 20% of their time in a week performing non-tip-producing work must be paid the full minimum wage for that time. In 2021, the Biden administration finalized **the “80/20/30” rule**, which added a limitation on “directly supporting work” performed for more than 30 consecutive minutes. Employers would lose the tip credit for that time, too.

However, following a lawsuit brought by the Restaurant Law Center, **[the 5th Circuit vacated the 80/20/30 rule in 2024](#)** and the agency removed it from its regulations and guidelines. Now, at least in the Fifth Circuit, there are no longer any time limits included in the DOL’s rules for tipped employees, so long as they are conducting work that is part of the tipped occupation. But the 5th Circuit’s decision does not impact the DOL’s “dual jobs” regulation, which you can **[read more about here](#)**.

**Emily Litzinger, a partner in FP’s Louisville Office,** cautions that some courts may still rely on the 80/20 rule outside of the 5th Circuit because of past case law that was decided when the guidance was still in place. In addition, several states have implemented their own version of the 80/20 rule, and those state laws would be applicable to workers that work in that state.



**Emily N. Litzinger**

Partner

**502.561.3978**

---

## **Service Focus**

**Wage and Hour**

---

## **Industry Focus**

**Hospitality**

“Understand that you might have to defend against claims that you’re out of compliance, depending on where you operate,” Litzinger said. “Plain and simple – plaintiffs’ attorneys are still filing these types of claims outside of the 5th Circuit and arguing that 80/20 still exists.”

**Want to Learn More?** Join FP on April 15 for a [State of the Union on the 80/20 Tip Rule](#) webinar to hear about major trends and other important court decisions since the former rule was overturned. Our tip credit crew – partners Courtney Leyes, Emily Litzinger, Ted Boehm and Marty Heller – will provide practical advice on how to handle tip practices with your tip-credit employees to remain compliant with the FLSA. [Register here.](#)

## State and Local Changes

Even with the business-friendly posture of the current administration, hospitality businesses should also keep an eye on state law changes in this space, which may include more restrictions. Several states, cities, and local jurisdictions require a consistently rising higher base wage than the federal \$2.13 or have barred employers from using the tip credit altogether.

Here are the latest developments on local tip-credit rules employers should be watching this year:

- **New York City:** City lawmakers have [proposed a bill](#) that would phase out the tip credit for food service workers. The legislation, which is still pending, would also raise the minimum wage to \$30. Under the proposal, tipped workers could be paid a cash wage equal to at least two-thirds of the applicable minimum wage, provided tips bring them up to the full minimum wage. Beginning January 1, 2032, the required cash wage for tipped food services workers would increase by \$1.50 each year until it matches the full minimum wage, at which point employers would no longer be permitted to claim a tip credit.
- **Chicago:** The city council and the mayor are in a dispute over whether to keep a measure to phase out Chicago’s tipped worker minimum wage by July 2028. Mayor Brandon Johnson vetoed a council bill in March that would have frozen the city’s tipped minimum wage at \$12.62. However, the council will have an opportunity to vote to overturn that veto in the coming weeks.

**Location, Location, Location:** Again, for employers utilizing the tip credit, it's critical to know exactly where your business is operating to ensure you're in compliance with all applicable laws. Although the federal minimum wage has not changed since 2009, states all over the country are increasing their state minimums and setting limitations on the use of the tip credit. If you operate in a state where the minimum wage is higher than the federal minimum wage or there are limits on the tip credit, the state law must be followed.

**"The most important thing really comes down to knowing the jurisdiction that you're operating in,"** FP's Litzinger said. **"It could be the state, and it could be all the way down to the city or locality,"** she added.

#### **4 Reminders for Employers**

**1. Don't Forget to Provide Tip Credit Notices.** Employers that utilize the tip credit must provide proper notice to employees of the applicable wage and how the credit works. An employer can provide oral or written notice. Although not required, it is a best practice to provide this notice in writing and have employees acknowledge receipt.

**2. Review State and Local Law.** Many states (and some localities) have minimum wage rates that are higher than the federal level. Additionally, some states have different requirements relating specifically to tips, auto gratuities, and service charges, so be sure to consult with counsel regarding what rules apply to you.

**3. Evaluate Your Business Practices.** For those employers that rely heavily on the tip credit, it's important to be aware of the unique situations within your business that can create compliance issues. Evaluate your business, consider potential problem areas, and put a process in place to respond to and manage potential issues. For example, consider shifting opening and closing duties to server assistants and hosts or ending the use of tip pools.

**4. Conduct Regular Training.** Train managers on evolving rules relating to tipped employees.

**Remember to register for our April 15 [State of the Union on the 80/20 Tip Rule](#) webinar to hear about major**

trends and other important court decisions since the former rule was overturned.

## Conclusion

If you have any questions about the tip credit or other wage and hour rules, reach out to your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Hospitality Industry Team](#) or in our [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.