

National Restaurant Association Reminder: Giving Employees Notice about the Tip Credit

Federal minimum wage law, or the Fair Labor Standards Act, allows employers under certain conditions to “credit” some portion of tips received by employees toward the employer’s minimum wage obligation. This is called taking a tip credit. Federal law currently allows employers to take a maximum tip credit of \$5.12 an hour against employees’ wages; some states set a lower tip-credit amount or prohibit it.

One of the conditions for taking a tip credit is that employers must inform employees about the tip credit.

Specifically, the FLSA’s Section 3(m), found at 29 U.S. Code 203(m), says employers may not take a tip credit unless “the employee has been informed by the employer of the provisions of [subsection 203(m)].”

Department of Labor Tip Credit Notice Regulation

Effective May 5, 2011, the Department of Labor [amended its tip-credit regulations](#) to outline more specific requirements for employers about the notice they must provide to tipped employees about the tip credit. The amended regulations, at 29 C.F.R. sections 531.54 and 531.59(b), require employers -- in advance of taking the tip credit -- to “inform” employees of certain information. According to the amended regulations, this information must include:

1. The amount of the cash wage to be paid by the employer to the tipped employee
2. The amount of tips to be credited as wages toward the minimum wage (note: federal law allows a maximum tip credit of \$5.12 per hour and some states restrict it below that or disallow it completely; in all cases, the tip credit taken can never exceed the value of tips actually received);
3. That all tips received by the employee must be retained by the employee, except for tips contributed to a valid tip pool limited to employees who customarily and regularly receive tips;
4. That the tip credit shall not apply to any employee who has not been informed by the employer of the provisions for a tip credit; and
5. For employers that require tip pools, any required tip-pool contribution amount or percentage, including notice that the tip credit may be taken only as to the amount the server actually receives, and that the employer may not retain any of the server’s tips for any other purpose.

The DOL allows the notice to be given in verbal or written form. However, the agency strongly encourages the employer to provide notice in writing so that the employer, if challenged, can establish that proper notice was actually given.

The National Restaurant Association continues to recommend that its members provide the required notice to each tipped employee **in writing**, and that each employee sign and date the notice, affirming that they understand it.

The NRA provides the following suggested notices for your use that may satisfy DOL’s new regulatory requirements. However, before using the attached (or any other form of notice, for that matter), please have your legal counsel approve whatever form you use. The NRA does not purport or guarantee that this form will comply with the new requirement.

VERSION A: NOTICE TO TIPPED EMPLOYEES WHERE THERE IS NO EMPLOYER-REQUIRED TIP POOL

The U.S. Department of Labor recently amended its tip credit notice regulations, effective May 5, 2011, to require employers to inform tipped employees of certain tip credit information. We are informing you of the following as a result of this new requirement:

- The amount of cash wage to be paid to you per hour will be \$ [fill in hourly cash wage amount here].
- Assuming you have received a sufficient amount of tips to cover the tip credit, the amount of your tips per hour to be credited as wages will be \$ [fill in hourly tip credit amount here].
- You have the right to retain all the tips you receive, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips.
- The tip credit shall not apply unless you have been informed of these requirements.

You are being provided this information in accordance with Section 203 (m) of the Fair Labor Standards Act. Please sign and date this notice indicating that you understand it, and return it to _____. Contact _____ at _____ if you have any questions.

Thank you.

Employee's Name (Print)

Employee's Signature

(Date)

VERSION B: NOTICE TO TIPPED EMPLOYEES PARTICIPATING IN AN EMPLOYER-REQUIRED TIP POOL

The U.S. Department of Labor recently amended its tip credit notice regulations, effective May 5, 2011, to require employers to inform tipped employees of certain tip credit information. We are informing you of the following as a result of this new requirement:

- The amount of cash wage to be paid to you per hour will be \$ [fill in hourly cash wage amount here].
- Assuming you have received a sufficient amount of tips to cover the tip credit, the amount of your tips per hour to be credited as wages will be \$ [fill in hourly tip credit amount here].
- You have the right to retain all the tips you receive, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips. Your required tip-pool contribution or percentage is [fill in required tip-pool contribution amount/percentage here]. The tip credit being taken is only on the amount you actually receive and your tips will otherwise not be retained except for your contribution to the tip pool.
- The tip credit shall not apply unless you have been informed of these requirements.

You are being provided this information in accordance with Section 203 (m) of the Fair Labor Standards Act. Please sign and date this notice indicating that you understand it, and return it to _____. Contact _____ at _____ if you have any questions.

Thank you.

Employee's Name (Print)

Employee's Signature

(Date)