



MISSOURI Restaurant News

August 16, 2021

Tell Washington that the 80/20 Rule is Bad for Restaurants

The U.S. Department of Labor (DOL) issued a proposed rule on June 23 which seeks to reinstate the "80/20" interpretation of the Department's dual jobs regulation to address the application of the Fair Labor Standards Act (FLSA)'s tip credit to tipped employees who perform both tipped and non-tipped duties. Specifically, it proposes that if an employee performs work that directly supports tip-producing work for a substantial amount of time – exceeding 20 percent of all the hours worked during the employee's workweek or exceeding 30 continuous minutes – "that worker is no longer performing labor that is part of the tipped occupation." The proposal goes on to clarify that employers may not take a tip credit for work that is not part of the tipped occupation.

Excellent articles explaining the DOL's proposed rule were contributed by law firms and MRA friends [Littler](#) and [McMahon Berger](#).

Missouri Restaurant Association, as well as our partners at the National Restaurant Association, are on record opposing the "80/20" rule. MRA in 2018 filed an [Amicus Brief](#) in support of a suit brought by the Texas Restaurant Association and NRA's Restaurant Law Center that challenged the validity of the "80/20" rule. Assigning arbitrary caps and attempting to micromanage restaurant work at the level of task assignment has led to mass compliance burdens and unnecessary and costly litigation. Restaurants attempting to emerge from the pandemic on solid footing should not be saddled with compliance and legal challenges that the reinstatement of this rule would create.

An article appearing in [Restaurant Business](#) likely signals the opinion of the Biden DOL regarding the "80/20" rule.



On June 21, the U.S. Department of Labor announced that it intends to change certain regulations that apply to tipped employees. Specifically, the DOL proposes to implement an 80/20 Rule. Which means that:

· Tipped employees won't be allowed to spend more than 30 consecutive minutes or 20% of their time on tasks that directly support tip-producing work, such as a waiter wiping tables after customers leave or bartenders preparing garnishes for drinks.

· Employers will need to track tipped employees working time through three categories: time spent on tasks that produce tips, time spent on tasks directly supporting tip-producing work, and time spent on tasks that are not part of the "tipped" occupation.

· Limits will be placed on taking the tip credit based on the category of work performed and taking a tip credit won't be allowed for any time spent on work that the DOL considers not part of the tipped occupation.

DOL needs to hear from YOU! Your voice is critical to preventing the DOL from issuing rules that would be damaging to an industry still recovering from pandemic revenue loss and facing further uncertainty due to potential COVID-19 variants and evolving guidance from the Centers for Disease Control and Prevention (CDC).


Please let the Department of Labor know that you oppose rule changes for tipped employees by completing our grassroots message campaign today!

[TAKE ACTION](#)

Personalized health insurance for hospitality workers

The Missouri Restaurant Association is pleased to offer hospitality workers access to a variety of health insurance solutions for individuals & families.

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