

## Fair Labor Standards Act (FLSA) Regulation Changes

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On April 5, 2011, the Federal Department of Labor published clarifications to compliance and overtime regulations. These regulations were effective May 5, 2011.

One of the clarifications relates to tip pooling. Employers may take a “tip credit” under the FLSA against minimum wages paid to tipped employees. The revised regulations impose additional requirements. If tips are placed in a common pool for disbursement (a “tip jar”), then the pool can only include those employees who “customarily and regularly receive tips.” If non-tipped employees are included in the pool, the employer cannot take a tip credit but must pay full minimum wage.

The biggest change is that the employer must inform its employees in advance of certain things: (1) the amount of the cash wage that is to be paid to the tipped employee; (2) the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which may not exceed the value of the tips actually received by the employee; (3) that all tips received by the employee must be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit shall not apply to any employee who has not been informed of these requirements. See 29 C.F.R. § 531.59 (2011).

A clarification to the overtime regulations pertains to certain uses of company vehicles. The employee is “on the clock” and the workday begins only when the individual first engages in principal activities. If he is engaged in activity for company benefit, he must be paid for the time. However, the use of an employee’s vehicle for travel and activities that are incidental to the use of such vehicle are not considered principal activities. During commuting “communication between the employee and employer to obtain assignments or instructions, or to report work progress or completion” is not a principal activity, and is, therefore, non-compensable as overtime. Unfortunately, the Department of Labor did not provide any further examples in the regulation. See 29 C.F.R. parts 785 and 790 (2011).

While these FLSA revisions do not impose vast new requirements, employers should review the regulations to ensure they comply with the latest changes.