

LEGAL UPDATE



HIGHLIGHTS

- On Oct. 29, 2021, the DOL issued a final rule updating tip credit regulations under the FLSA, effective **Dec. 28, 2021**.
- On **Aug. 23, 2024**, the U.S. Court of Appeals for the 5th Circuit vacated the DOL's 2021 final rule, finding it contrary to the FLSA and APA.
- On **Dec. 16, 2024**, the DOL announced a final rule removing the 2021 Dual Jobs Rule from the CFR and reinstating regulatory text as it existed prior to the effective date of the 2021 Dual Jobs Rule.
- The final rule is scheduled to be published in the Federal Register on **Dec. 17, 2024**, and becomes effective upon publication.

DOL Announces Dual Jobs Final Rule

On **Dec. 16, 2024**, the U.S. Department of Labor (DOL) announced a [final rule](#) that removes the agency's 2021 final rule (2021 Dual Jobs Rule) that updated tip regulations under the Fair Labor Standards Act (FLSA) from the Code of Federal Regulations (CFR) and reinstates regulatory text as it existed in the CFR before the effective date of the 2021 Dual Jobs Rule. The DOL's final rule is a technical correction to align regulatory text to the recent U.S. Court of Appeals for the 5th Circuit decision that [vacated](#) the DOL's 2021 Dual Jobs Rule. The final rule is scheduled to be published in the Federal Register on **Dec. 17, 2024**.

Background

The FLSA allows employers to claim a tip credit when compensating tipped employees for tipped work. This credit allows employers to pay their tipped employees as little as \$2.13 per hour as long as they make at least the federal minimum wage when tips are factored in. Tipped employees are those engaged in occupations in which they customarily and regularly receive more than \$30 a month in tips. The DOL recognizes that some employees routinely engage in both tipped and nontipped occupations. These are known as dual-job situations. However, there is a difference between employees with dual jobs and employees who incidentally engage in nontipped occupations, such as maintenance work and preparatory or closing activities.

On Oct. 29, 2021, the DOL [issued](#) a final rule that addressed the circumstances under which an employer can take a partial credit against its minimum wage obligations based on the tips received by employees. This rule limited the time an employee could spend on work that was not tip-producing to 20% of the employee's hours in a given workweek while still allowing the employer to claim a tip credit. The final rule distinguished between tip-producing work (e.g., waiting tables) and work that supports tip-producing work (e.g., bussing tables). The final rule also imposed a new "30-minute" restriction, limiting the continuous time during a shift that a tipped employee could spend performing tip-supporting work.

On Aug. 23, 2024, the 5th Circuit found that the DOL's 2021 Dual Jobs Rule was inconsistent with the text of the FLSA and arbitrary and capricious under the Administrative Procedure Act (APA). In doing so, the court vacated all of the 2021 final rule.

Key Highlights

In accordance with the 5th Circuit's ruling, the DOL's final rule removes the 2021 Final Rule from the CFR and restores the dual jobs regulatory text that existed before the 2021 final rule's effective date. This action is a technical amendment accounting for changes in the law that have already occurred. The final rule is effective upon publication in the Federal Register.

More Information

Employers can find more information and resources related to the tip regulations and the final rule on the DOL's [webpage](#).