

# DOL Provides Further FLSA Guidance Regarding Manager and Supervisor Participation in Tip Pools

By James P Looby and Michael D Considine

January 30, 2025

On January 14, 2025, the U.S. Department of Labor (DOL) issued another opinion letter ([FLSA2025-1](#)) reiterating its position that managers and supervisors are prohibited from participating in a tip pool under any circumstance.

Tip pooling—when employees combine tips earned during a shift and divide the shared pool amongst themselves at some point thereafter—is a practice that is generally allowed under the Fair Labor Standards Act (FLSA). An important exception is that employers are prohibited from “keep[ing] tips received by their employees for any purpose, including allowing managers or supervisors to keep any portion of employees’ tips.” [29 U.S.C. § 203\(m\)\(2\)\(B\)](#). DOL regulations further instruct that an employee is a supervisor or manager if he satisfies the primary duty test of the FLSA’s executive employee exemption at [29 C.F.R. §§ 541.100\(a\)\(2\)–\(4\)](#), [29 C.F.R. § 531.52\(b\)\(2\)](#).

Earlier this month, [we reported](#) on [FLSA2024-02](#), in which the DOL opined that an individual who held a 20% equity interest in a business and managed and supervised bartenders, but who also bartended and regularly engaged with customers, could *not* participate in a tip pool with other bartenders despite performing tipped work. The DOL reasoned that the individual qualified as a “manager or supervisor” under Section 203(m)(2)(B) and, therefore, was prohibited from receiving any tips that were “based in part on other employees’ work.” The letter maintained, however, that the individual could keep tips received directly from customers for work the individual “directly and solely” provided (e.g., when the individual worked as the only bartender on duty).

FLSA2025-1, issued in response to questions from a quick service restaurant, is an affirmation and extension of the same principles articulated above. First, the DOL was asked whether “a Team Leader or Assistant Team Lead who is a supervisor or manager for purposes of Section 3(m)(2)(B),” but who “works a shift in a non-supervisory capacity,” could participate in the tip pool with non-supervisory employees for that shift. The DOL stated that whether an employee is a manager or supervisor under the primary duty test of the executive exemption is determined on at least a workweek basis, and does not vary from shift to shift. Accordingly, employees who are supervisors or managers *cannot* participate in a tip pool, even if they spend a shift performing primarily non-managerial (or non-exempt) duties. To hold otherwise, the DOL continued, would circumvent the FLSA’s blanket prohibition on managers or supervisors retaining any portion of other employees’ tips.

Next, the DOL was asked whether “Team Leaders or Assistant Team Leads” who are considered managers and supervisors under Section 3(m)(2)(B) “may receive tips from a tip pool during shifts staffed solely by other managers and supervisors.” The DOL responded in the negative, stating that such an arrangement also runs afoul of Section 3(m)(2)(B) because the other managers and supervisors in the tip pool are still “employees” under the FLSA and, therefore, a different manager or supervisor cannot receive any portion of their tips.

Lastly, the DOL was asked whether “a Shift Lead, who is not a supervisor or manager for purposes of Section 3(m)(2)(B) but who is the highest-ranking employee during a particular shift” may participate in a tip pool during that shift. The DOL affirmed that a non-managerial employee *may* receive tips from a tip pool even if he is the most senior or highest ranking employee during a particular shift. Again, the DOL relied on the principle that whether an employee satisfies the primary duty test of the executive exemption, which is analyzed on a workweek basis, does not change from shift to shift.

Accordingly, an employee that is not a manager or supervisor under the executive employee exemption's primary duty test is not prohibited from participating in a tip pool despite occasionally directing the work of others.

Taken together, the two opinion letters (FLSA 2024-2 and FLSA 2025-1) signal the DOL's renewed focus on tipping and tip pool issues under the FLSA, which is likely to continue. Employers would be wise to heed the DOL's guidance and ensure that managers and supervisors are never participating in employee tip pools or otherwise retaining a portion of other employees' tips—even when the other employees are also managers or supervisors. Additionally, with President Trump reassuming office, employers should be prepared for further changes to and guidance regarding tip-related laws at the federal, state, and local levels.

For more information regarding the issues discussed in this article or other wage-and-hour issues, please contact **James P. Looby** at [jlooby@vedderprice.com](mailto:jlooby@vedderprice.com), **Michael D. Considine** at [mconsidine@vedderprice.com](mailto:mconsidine@vedderprice.com), or any other Vedder Price attorney with whom you have worked.

[vedderprice.com](https://vedderprice.com)