

EPI public comments on Alaska's tipped pooling arrangements

Public Comments • By [Heidi Shierholz](#) • February 26, 2018

Submitted via email at dol.iss.regulations@alaska.gov

Becky Weimer
Department of Labor and Workforce Development
Labor Standards and Safety
P.O. Box 111149
Juneau, AK 99811-1149

Re: Notice of Proposed Changes Relating to Tip Pooling Arrangements in the Regulations of the Department of Labor and Workforce Development

Dear Ms. Weimer:

The Economic Policy Institute (EPI) submits these comments in response to the Department of Labor and Workforce Development's [proposal](#) to amend regulations in Title 8 of the Alaska Administrative Code dealing with tip pooling arrangements. The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank in Washington, DC created in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes public policies that protect and improve the economic conditions of low- and middle-income workers, and assesses policies with respect to how well they further those goals. Given EPI's focus on economic analysis, the following comments will be focused largely on the economic impact of the proposed changes.

A U.S. Department of Labor's 2011 Final Rule updated tip credit regulations and clarified the Department's decades-long statutory interpretation that tips are the property of the employee and may not be confiscated by employers, codifying these critical wage protections for working people.¹ In December 2017, the U.S. Department of Labor proposed to rescind portions of that 2011 rule, including abolishing the regulation that prohibits employers from taking workers' tips.² Alaska regulations currently limit employer

confiscation of employees' tips by referencing federal law, meaning that if the U.S. Department of Labor finalizes its proposal to rescind tip protections, workers in Alaska will also lose these protections. We agree with the Alaska Wage and Hour Administration that the current restrictions prohibiting employers from taking workers' tips work well for Alaska and urge the Alaska Department of Labor and Workforce Development to adopt the proposed regulations, effectively preserving the current protections by adopting its own language rather than referencing federal law.

EPI estimates that if Alaska does not adopt the proposed regulations and the U.S. Department of Labor finalizes its proposal to rescind the protections, workers in Alaska will lose \$14.4 million annually. The methodology underpinning our estimate is very much in the spirit of estimates that the U.S. Department of Labor regularly produces. We used as our primary data sources both IRS W-2 data and U.S. Bureau of Labor Statistics data, and we arrived at our main estimate by applying standard economic theory, including a rigorous treatment of the fact that market forces will limit the amount of tips that employers will be able to take without losing workers. Further, mindful of uncertainty, we provide a range for our estimate; we find that the loss to workers in Alaska would range from \$1.6 million per year to \$38.5 million per year, with our best estimate, as mentioned above, being \$14.4 million per year. Our methodology is described in detail in the attachments. The first attachment provides our national estimate of the amount that workers will lose if the U.S. Department of Labor finalizes its proposal, along with a detailed methodology, and the second attachment provides state breakdowns, including our estimate of the impact on workers in Alaska.

It is important to note that if employers are allowed to take control of tips, they would be no more likely to share tips with back-of-the-house or other nontipped workers than they would be to make any other choice about what to do with a new revenue stream, including using the money to make capital improvements to their establishments, to increase executive pay, or to line their own pockets. In fact, basic economic logic dictates that it is highly unlikely that back-of-the-house or other nontipped workers would get more pay. There is currently no limit to what these workers can be paid, so employers are *already* paying their back-of-the-house or other nontipped workers what they "need" to pay to attract workers willing to work in those jobs. Employer control of tips won't change that. Thus, if employers do distribute some tips to nontipped workers, it will likely be offset by a reduction in their base pay, leaving their take-home pay largely unaffected.

To summarize, EPI finds that if Alaska does not adopt the proposed regulations and the U.S. Department of Labor finalizes its proposal to rescind tip protections, the main economic effects in Alaska would be as follows: (1) \$14.4 million a year would be transferred from tipped workers to their employers, and (2) the take-home pay of back-of-the-house or other nontipped workers will remain largely unchanged. The \$14.4 million is 36 percent of the estimated \$40.1 million in total tips earned by tipped workers annually in Alaska. If customers were to tip less in response to knowing that employers can take tips, that would mean that some of the \$14.4 million shifted away from workers would be shifted to customers instead of to employers—but workers would still lose \$14.4 million.

We urge the Alaska Department of Labor and Workforce Development to protect workers

and adopt the proposed regulations. Thank you for the opportunity to submit comments. Please do not hesitate to contact me at (202) 533-2560 if you have questions about EPI's estimates of the transfer of tips from workers to employers, or anything else in these comments.

Sincerely,

Heidi Shierholz
Senior Economist and Director of Policy

Attachments:

1. **Employers would pocket \$5.8 billion of workers' tips under Trump administration's proposed 'tip stealing' rule:** <http://www.epi.org/publication/employers-would-pocket-workers-tips-under-trump-administrations-proposed-tip-stealing-rule/>
2. **Women would lose \$4.6 billion in earned tips if the administration's 'tip stealing' rule is finalized:** <http://www.epi.org/publication/women-would-lose-4-6-billion-in-earned-tips-if-the-administrations-tip-stealing-rule-is-finalized-overall-tipped-workers-would-lose-5-8-billion/>

Endnotes

1. See generally 2011 Final Rule, 76 Fed. Reg. 18,832.
2. U.S. Dep't of Labor, Notice of Proposed Rulemaking, *Tip Regulations Under the Fair Labor Standards Act (FLSA)*, 82 Fed. Reg. 57,395 (Dec. 5, 2017).