

Latest DOL Opinion Letter Says Goodbye To The 80-20 Rule

November 9, 2018 | [Currents - Employment Law](#), [Employment Lessons](#)



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If you are a wage and hour rules buff, it is now old news that the Department of Labor has revived an old habit – the issuance of Opinion Letters. These brief policy memos serve as straightforward guidance on a particular issue. Well, the DOL is back at it this week and has issued another new set of Opinion Letters. One in particular is catching the eye of the restaurant and service industry.

In an Opinion Letter issued last week, the DOL has done away with the 80-20 rule for tipped workers and restored its old guidance. The 80-20 rule acted as a limit on the use of the lower tipped wage rate (\$2.13 per hour) when a tipped worker spent more than 20% of their working time on non-tipped work. In other words, employers could only apply a tip credit to time spent on non-tipped work if such duties did not exceed 20% of the employee's time.

So, why the roll-back? Practically speaking, the rule was unworkable. Employers could not account for every different task employees performed in the course of their work. Take for example a waiter: the employer would have to show the employee's time spent taking orders and delivering food versus cleaning floors and rolling silverware into napkins.

To put it clearly, the reinstated Opinion Letter states, "We do not intend to place a limitation on the amount of duties related to a tip-producing occupation that may be performed, so long as they are performed contemporaneously with direct customer-service duties and all other requirements of the Act are met."

What does this mean for employers, even those without tipped workers? It means the resurgence of Opinion Letters should not be overlooked. As the letters may include new or reinstated rules and guidance, employers should look closely as additional letters roll out.