Will The DOL Rescind The Tip Pool Rule?

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Mark D. Scudder
Of Counsel

On Oct. 24, the Office of Management and Budget announced that it has received a proposal from the U.S. Department of Labor (DOL) to rescind its 2011 rule on tip pooling. The 2011 rule prevents employers from requiring tipped employees, who are paid less than minimum wage, to share their tips with traditionally non-tipped workers. The DOL has not released its proposal publicly, but its regulatory agenda for 2017 indicates that it wants to "rescind the current restrictions on tip pooling by employers that pay tipped employees the full minimum wage directly." Interest groups differ on the advantages of tip pooling. Employer advocates argue that tip pooling gives traditionally non-tipped employees – such as cooks and other kitchen staff – a financial incentive to perform well. Employee advocates claim that tip pooling is simply a way for employers to save money by paying additional employees less than minimum wage, while reducing the take-home pay of traditionally tipped employees. Presently, the DOL's 2011 tip rule is at the center of litigation and a split between two U.S. Courts of Appeal. The Ninth Circuit has upheld the rule, while the Tenth Circuit has rejected it. Industry groups have petitioned the U.S. Supreme Court to resolve this split and their petition is currently pending. If the DOL rescinds the rule, then the split in the courts would become moot. Employers with tipped employees should keep an eye on these potential changes, as they may lead to more flexibility in their payroll practices in the near future.

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