

FLSA-214

March 28, 1977

This is in reply to your letter dated December 21, 1976, asking for an opinion about the method of paying tips when charged on a credit card.

The Fair Labor Standards Act is the Federal law of most general application concerning wages and hours of work. The enclosed statement explains the application of the Act to tipped employees. A "tipped employee" is any employee engaged in an occupation in which he or she customarily and regularly receives more than \$20 a month in tips. As indicated, tips include amounts designated as "tip" by credit card customers on their charge slips.

Where tips are charged on a credit card and the employer must pay the credit card company a percentage of the bill for use of its credit facilities, we will not question a practice whereby the employer reduces the amount of credit card tips paid over to the employee by an amount no greater than that charged him by the credit card company. For example, where a credit card company charges an employer 5 percent on all charge sales for use of its credit facility, the paying over to the employee of 95 percent of all tips charged will not result in a violation of the Act. However, the 95 percent of tips due the employee must be paid over not later than the regular pay day and may not be held by the employer while he is waiting to be reimbursed by the credit card company.

Sincerely,

Administrator