

FLSA-895

August 8, 1979

This is in reply to your letter of July 16, 1979, asking if the tip credit provision of the Fair Labor Standards Act may be used when compensating a waitress for time spent performing certain activities in a restaurant.

Regarding the restaurant in question, the waitresses report to work two hours before the doors are opened to the public to prepare the vegetables for the salad bar. You state the time spent by the waitresses in preparing the vegetables constitutes the work of a waitress, even though 10% or less of the vegetables are used in the kitchen for sandwich preparation and meal garnishments. You state this amount of vegetables used in the kitchen should not affect our opinion, as it should be considered de minimis. Also this preparatory work is analogous with the work performed by a barber or beautician before their actual performance of work on a customer. Thus, as the waitresses each receive "customarily and regularly" \$30 a month in tips, you believe the time in question may be paid for, in part, by tips.

We disagree. Section 531.56(e) of the enclosed copy of 29 CFR Part 531, deals with tipped employees who are performing dual jobs. As explained in that section, where a maintenance man in a hotel also serves as a waiter, the tip credit is available only for the hours worked as a waiter, if he is a "tipped employee" within the meaning of section 3(t) of the Act. (Part 531 is presently being revised to take into account amendments to the FLSA relating to the tip credit since the interpretations therein were last issued.)

The Congressional Record (in particular page 43 of Senate Report No. 93-960, February 22, 1974) indicates that employees who "customarily and regularly" receive tips are waiters, bellhops, waitresses, countermen, busboys and service bartenders. It also indicates that janitors, dishwashers, chefs and laundry room attendants are not tipped employees. Accordingly, since it is our opinion that salad preparation activities are essentially the activities performed by chefs, no tip credit may be taken for the time spent in preparing vegetables for the salad bar.

Sincerely,

Herbert J. Cohen
Assistant Administrator

Enclosures