FLSA-902

August 13, 1970

This is in reply to your letter of July 30, 1970, concerning the definition of a "tipped employee" under section 3(t) of the Fair Labor Standards Act. You ask whether an employee who earns $20 or more in tips for 10 months out of the year may be considered a "tipped employee" under this definition.

A tipped employee is defined in section 3(t) of the Act to mean any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips. Under the provisions of section 3(m) an employer is permitted to credit tips received by a tipped employee against the applicable minimum wage up to 50 percent of such minimum. The payment of wages to tipped employees is discussed in section 531.50 through 531.60 of Regulations, Part 531.

The words "customarily and regularly" as used in section 3(t) and defined in section 531.57 of the regulations do not eliminate the necessity of determining each month whether an employee has received more than $20 in tips. An employee who normally and recurrently receives more than $20 a month from tips may be considered a tipped employee in a month where this test is not met if the reason is sickness, vacation, seasonal fluctuations (section 531.57) or initial and terminal months of employment (section 531.38). In our opinion, an employer may not average tips over an entire year to satisfy the $20 a month tip requirement.

Sincerely

Robert D. Moran
Administrator