



WHD-OL-1997-0008

January 21, 1997

Name*

This is in response to your letter of October 21, 1996, requesting a formal opinion as to the adequacy of the information your client gives its tipped employees regarding Section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m). Section 3(m) provides in pertinent part that the tip credit provisions "shall not apply with respect to any tipped employee . . . unless (1) such employee has been informed by the employer of the provisions of this section . . ."

You state that your client displays the FLSA poster furnished by the Wage and Hour Division, explains its tip pooling arrangement to employees when first hired, and includes the explanation in the employee handbook which is provided to each employee and posted on the employee bulletin board. In addition, the employees' paycheck stubs explain the amount of tip credit taken by the employer.

The FLSA poster alone is not sufficient notice to employees of the provisions of Section 3(m). Even if the poster were prominently displayed, an employee might not take notice of the tip credit provision unless specifically directed to it by the employer. However, the combination of verbal notification, written notification in the employment handbook, and notification by paycheck stub would be sufficient to meet the notice requirement in Section 3(m).

I trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).