



Tipped Language in the FY18 Omnibus

While the tipped worker provision included in the omnibus includes some added benefits for tipped workers, including an express prohibition on employers/managers retaining tips for themselves and a new related enforcement provision, and it would also repeal parts of a 2011 Labor Department rule that clarifies tips are the property of the workers who earn them.

The provision would roll back a 40-year-old policy that tips are the property of workers who earn them. The language would in effect allow employers to require tipped workers to hand over any or all of their tips so employers can redistribute as they choose.

- **The language would allow employers to redistribute tips earned by tipped workers in order to supplant wages for non-tipped workers: this will leave tipped workers with lower incomes and non-tipped workers with no guarantee of higher pay.** The Labor Department and the National Restaurant Association have argued that allowing employers to redistribute tips to non-tipped workers would reduce wage disparities between tipped and non-tipped workers. However, as Economic Policy Institute (EPI) economic analysis indicates, if employers can control the distribution of tips, employers would opt to cut the base pay for non-tipped workers and use tips taken from tipped workers to keep non-tipped workers at their existing pay levels. This effectively allows the employer to keep tips and leave non-tipped workers no better off and tipped workers with lower income. This point was made in the [comment letter](#) opposing the Labor Department's proposed tip rule signed by more than 120 Members of the House and Senate.
- **The American people oppose employer control of tips.** A January 2018 poll found [82 percent of respondents oppose](#) allowing "companies to control and distribute the tips that customers leave for employees, such as waiters or hotel housekeepers, instead of giving the tips to the employee who received them."
- **This language was "airdropped" into the omnibus, and has not been subject to adequate Congressional review in the light of day.** There has been no economic analysis of how the Senate language would impact workers. There has been no opportunity for Members to consider this language under regular order and weigh the potential impacts or explore any unforeseen consequences. In the end, we must ensure that changes to the federal statute designed to protect workers' income does them no harm.
- **To fairly evaluate this provision, it should be compared to current law, which protects workers, rather than a proposed rule that, based on a flawed rulemaking process, has a strong possibility of being successfully challenged in the courts.** Four days before the comment deadline for his controversial tip rule, [Bloomberg reported](#) that senior political officials at *the DOL withheld unfavorable legally required economic analyses that indicated that workers would lose billions of dollars under the rule*. In proposing the rule, DOL stated it did not conduct any such quantitative analysis, contrary to law. Just yesterday, Bloomberg [reported](#) that Labor Secretary Acosta convinced OMB Director Mick Mulvaney to circumvent Executive Orders and issue the rule without an economic analysis. This omnibus language, compared to current law, is a roll back of protections. Arguments that it is preferable to adopt the omnibus language rests on the premise that Congress should trade away current protections in the DOL's 2011 rule on the chance that the DOL's proposed rule is eventually finalized and not invalidated based on an unlawful rulemaking process.