

5 Employment Rules That Were Stymied In 2017, *Law360*, ft. Aaron Solomon

Aaron Solomon, attorney at Kaufman Dolowich & Voluck, LLP on Long Island, was quoted in a Law360 Article written by Vin Gurriero published on December 12, 2017. Law360 looked at five key regulatory developments from 2017.

Commenting on Tip Pool Reversal:

In early December, the Trump DOL proposed rolling back a 2011 rule that deemed tips the property of the employee who receives them, whether or not their employer uses tips to fulfill minimum wage requirements, which is known as taking a “tip credit.”

The Obama-era rule amended the DOL's interpretation of the Fair Labor Standards Act's tipping provisions to bar all employers from taking a portion of service employees' tips and sharing them with traditionally nontipped workers like kitchen staff.

Previously, the DOL had only blocked employers that took the tip credit — an option allowing them to pay tipped workers at below minimum wage if the difference is made up with tips — from maintaining tip pools.

In proposing to rescind the rule, the DOL said it was concerned both about the 2011 rule's scope as applied to employers that pay the full federal minimum wage to their tipped employees, as well as whether the existing rule “incorrectly construed the statute in promulgating the tip credit regulations that apply to such employers.”

Aaron Solomon, an attorney at Kaufman Dolowich & Voluck LLP, said the new rule would give businesses in the hospitality sector that don't avail themselves of the tip credit the flexibility to expand their tip pooling and tip sharing arrangements to include workers like cooks and dishwashers who don't usually receive tips.

“However, there are jurisdictions, such as New York, that have their own statutes and regulations regarding tips and tip pooling/sharing,” Solomon said. “As far as New York is concerned, the new regulation would directly conflict with the requirements of New York law. Accordingly, a New York employer who includes kitchen workers in its tip pool pursuant to the new federal regulation may still find itself facing liability for unlawful diversion of tips under state law.”