

875—217.59(91D) The tip wage credit. In determining compliance with the wage payment requirements, the amount paid to a tipped employee by an employer is deemed to be increased on account of tips by an amount which cannot exceed 40 percent of the minimum wage applicable to the employee in the workweek for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable. The credit allowed on account of tips may be less than 40 percent of the applicable minimum wage; it cannot be more. The actual amount shall be determined by the employer on the basis of the employer's information concerning the tipping practices and receipts in the establishment. However, an employee who can show to the satisfaction of the commissioner that the actual amount of tips received was less than the amount determined by the employer as a tip credit shall receive an appropriate wage adjustment. It is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips. If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips. An employee may request review of tip credit determinations made by employers, in the event that the employee considers that the tip credit taken exceeds actual tips. The tip credit may be taken only for hours worked by the employee in an occupation in which the employee qualifies as a tipped employee. Under employment agreements requiring tips to be turned over or credited to the employer to be treated by the employer as part of gross receipts, the employer shall pay the employee the full minimum hourly wage, since for all practical purposes the employee is not receiving tip income.

SOURCE: 29 CFR 531.59.