Policy Matters Ohio

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Planned DOL rule lets bosses take billions from workers

Department hid impact analysis findings

This Monday, the Department of Labor (DOL) will close public comments on a proposed rule that would allow employers to confiscate the tips earned by workers. This would cost tipped workers in Ohio an estimated $224 million a year according to the Economic Policy Institute. Yesterday, Bloomberg Law revealed that DOL hid findings from a study it conducted showing that the rule would transfer billions of earnings from America's poorest workers to their bosses.

The measure rescinds the 2011 Final Rule, which formally codified a long-standing practice that recognized tips as the exclusive property of the workers who earn them. The Department calls the measure a "tip pooling rule," but it actually legalizes tip theft by business owners. Tip pooling is currently allowed under law – as long as it's done voluntarily by workers.

The DOL claimed it couldn't do an analysis of the impact. Even foregoing one would have been a dereliction of its duty under federal law. Now we know the Department *did* conduct a study, deliberately hid the findings and lied to the public.

"It is shocking that the DOL covered up its own findings to enact a rule that harms workers ," said Michael Shields, a workforce researcher with Policy Matters Ohio. "In light of this news, the DOL should withdraw this proposal immediately."

Currently, Ohio employers can pay workers just $4.15 an hour if they earn tips, but employees are permitted to keep all of the tips they earn. Owners must now pay non-tipped workers at least $8.30 an hour, the Ohio minimum wage. Under this rule, owners could reduce workers' base pay to as low as the $7.25 federal minimum wage, confiscate all tips and use them to get all workers up to $8.30 an hour, and keep anything above that.

The proposal contains no requirement that business owners who confiscate tips distribute them among workers at all. As long as they pay the state minimum wage, they are free to pocket them under the proposal.

The rule would cost tipped US workers $5.8 billion each year, according to EPI. In Ohio, restaurant servers and other tipped workers would lose $224 million a year to their bosses. An estimated 16.1 percent of all tips would be confiscated by employers.

Women would be most hurt by the rule: bearing $4.6 billion of the loss. Three in four tipped workers in Ohio are women (74.8 percent). Poverty wages and already uncertain tips contribute to more on-the-job sexual harassment than in any other industry, even accounting for size. The restaurant industry is the nation's second largest, and the fastest growing. Yet a typical Ohio waitress earns just 93 percent of the poverty line for a family of three including tips.

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