

January 19, 2020

ATTORNEY GENERAL RAOUL LEADS FEDERAL LAWSUIT TO PROTECT TIPPED WORKERS

Chicago — Attorney General Kwame Raoul and Pennsylvania Attorney General Josh Shapiro today led a coalition of nine attorneys general in filing a lawsuit to stop the last-ditch effort by the federal government to transfer employees' tips to their employers.

[The lawsuit](#) challenges a U.S. Department of Labor (DOL) rule that unlawfully seeks to remove the cap on the amount of time a tipped worker may be required to spend on non-tipped, related duties while receiving the tipped sub-minimum wage. The DOL's new rule would result in tipped workers performing more work for less pay, in effect transferring workers' tips to their employers. Under the Fair Labor Standards Act (FLSA), employers are required to pay their employees the federal minimum wage – currently \$7.25 per hour, although Illinois' minimum wage law requires that workers be paid at least \$11 per hour. Employers also have the option of paying a lower cash wage, no less than \$2.83 per hour, and taking a credit for the difference with the tips that employees earn. This is known as the tip credit.

"The Department of Labor's attempt to transfer employees' tips to their employers would harm thousands of workers who already earn low wages," Raoul said. "While I understand that many businesses are struggling due to the COVID-19 pandemic, relief should not come at the expense of workers. I will continue to defend against any effort to eliminate rules that protect workers from wage theft and other unfair employment practices."

The DOL's proposal eliminates the 80/20 rule. For the last 30 years, the 80/20 rule has capped at 20% of the employee's time the non-tipped, related duties an employee may perform while receiving the tipped sub-minimum wage. Under the DOL's rule, employers would be able to assign workers to virtually unlimited amounts of non-tipped work – such as cleaning, cooking and other "back of the house" tasks – while paying workers a lower wage and still taking a tip credit, rather than capping the amount of non-topped work permitted. The DOL's new rule also expands the universe of duties deemed "related" to the tipped occupation.

In the lawsuit, Raoul and the coalition assert that the rule contradicts the text and purpose of the FLSA, and that the DOL violated the rulemaking process requirements, including by failing to analyze the impact the rule would have on tipped workers. In addition, Raoul and the coalition argue that the DOL fails to justify its departure from the longstanding 80/20 rule, and the new rule will harm the states by reducing income tax revenue, increasing public benefits expenditures, and imposing administrative costs.

Today's lawsuit builds on Attorney General Raoul's effort to fight unlawful employment practices. In December 2019, Raoul led a coalition of 19 attorneys general submitting a comment letter opposing this change to the 80/20 rule. Amid the COVID-19 pandemic, Raoul has devoted resources to educate and obtain compliance from employers in protecting their workforces through adequate health and safety measures during the pandemic. On Jan. 1, 2020, a law went into effect to formally establish the Worker Protection Unit within the Attorney General's Office, as well as the Worker Protection Unit Task Force. The task force issued a report in November, highlighting the problems Illinois workers face and containing recommendations to further protect workers' rights. Attorney General Raoul encourages workers who have concerns about wage and hour violations or potentially unsafe working conditions to call his Workplace Rights Hotline at 1-844-740-5076 or to [file a complaint online](#).

Joining Raoul and Shapiro in the lawsuit are the attorneys general of Delaware, the District of Columbia, Maryland, Massachusetts, Michigan, New Jersey and New York.