

wage paid and the minimum wage. *See* 29 U.S.C. § 203(m). Specifically, this case concerns the interpretation by the Department of Labor of a regulation that addresses how the tip credit is to be applied for those employees who perform some duties that constitute a tipped job and other duties that constitute a non-tipped job. *See* 29 C.F.R. § 531.56(e); Complaint at Preliminary Statement.

2. Section 30d00(f) of the Department of Labor’s Field Operations Handbook¹ states that an employer may not take a tip credit as to time spent by a tipped employee performing tasks related to a tipped occupation that are not tip-producing, where that time exceeds 20% of the employee’s total hours worked. Complaint at ¶ 42.

3. In the Complaint, Plaintiffs allege that Section 30d00(f) exceeds Defendants’ regulatory authority under the Fair Labor Standards Act and was enacted improperly. *See* Complaint, generally.

4. On November 8, 2018, the Department of Labor issued an opinion letter that expressly “supersede[s]” the Field Operations Handbook provision challenged in this lawsuit. *See* Wage and Hour Opinion Letter, FLSA-2018-27, at 4, *available at* www.dol.gov/whd/opinion/FLSA/2018/2018_11_08_27_FLSA.pdf (last visited November 27, 2018) (the “Opinion Letter”).

5. The Opinion Letter states that the Department of Labor does “not intend to place a limitation on the amount of duties related to a tip-producing occupation that may be performed, so long as they are performed contemporaneously with direct customer-service duties ... or for a reasonable time immediately before or after performing such direct-service duties.” *Id.* at 1, 3-4.

¹ Previously § 30d00(e), before a December 2016 revision and reorganization.

6. The Opinion Letter, which is an “official statement of [Department of Labor] policy,” provides that “[a] revised [Field Operations Handbook] statement will be forthcoming.” *Id.* at 1, 4.

7. In addition to issuing the revised Field Operations Handbook statement, the Wage and Hour Division will instruct its staff, as a matter of enforcement policy, not to enforce the superseded interpretation reflected in Section 30d00(f) in any open or new investigation with respect to work performed prior to the issuance of the Opinion Letter.

8. The Parties agree that the guidance provided by the Opinion Letter resolves the case or controversy underlying the Complaint and thus renders the dispute moot.

9. Accordingly, the Parties agree that the Complaint should be dismissed. The Parties further agree that the dismissal is without prejudice.

10. The Parties further agree that all costs, including attorneys’ fees, will be borne by the respective parties.

Dated: November 30, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 30, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record in this case.

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