

## Tip Credits: Methods For Measuring Employee Work Time

By Elizabeth Arnold and Chester Hanvey (January 14, 2019, 1:11 PM EST)

Many companies in the hospitality industry (e.g., restaurants) use “tip credits” to augment some employees’ hourly rates. This practice involves crediting the tips an employee earns toward their hourly compensation, thus reducing the amount the employer contributes to meet the relevant minimum wage threshold.[1] This practice has received attention recently due to recent rulings (e.g., *Alec Marsh v. J. Alexanders*) and the reissuance of an opinion letter by the U.S. Department of Labor[2] regarding which activities should be categorized as “tippable” (i.e., should count as time when the employee could have received tips from customers).



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In this article, we describe how scientifically based methodologies have been used to determine how employees spend their time and, in some cases, to identify the proportion of that time that employees spend on “tippable” work.[3]

Frequently used to evaluate other forms of wage-and-hour compliance, such as classification and compensable time assessments,[4] job analysis is a widely-used approach to systematically study employee’s tasks and responsibilities.[5] This foundational tool is used for a variety of organizational purposes, including determining how employees spend their time and analyzing those data based on a topic of interest, such as whether the activities are customer service-related.



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The most common methods for evaluating tip credit policies include observation (time and motion) studies, questionnaires and structured interviews. Each of these methods has different strengths and may be more or less appropriate depending on the work being studied. One advantage of all of these methods is that they measure the percent of time employees spend performing all tasks. Regardless of whether legal guidance changes with respect to the definition of “tippable” work or the thresholds for percent of time employees must spend performing this work, data can be reanalyzed to be consistent with current requirements. Brief summaries of each approach and relevant examples are provided below for illustrative purposes.

### Observations

Observations involve “shadowing” employees and, using a traditional “time and motion” approach, documenting the tasks they perform in predetermined time increments. These individual tasks can then be grouped based on a coding scheme based on content that can be allocated into relevant categories,

such as tippable and nontippable work. An illustrative example of a partial observation record is shown below in Table 1.

**Table 1: Partial Observation Record**

Duration	Task Observed	Task Status
0:04:00	Take customer to table and chat with customers.	Tippable
0:00:50	Cash out customer at register.	Tippable
0:01:20	Cash out customer at register and chat with customer.	Tippable
0:01:10	Take customer to table, clean table and chat with customers.	Tippable
0:01:00	Talk to other server about towels — out of white ones.	Nontippable
0:00:50	Talk to cook about status of orders being prepared.	Nontippable
0:01:10	Greet server who just came on shift.	Nontippable
0:00:40	Make toast and warm muffin for customers.	Nontippable
0:01:50	Cash out customer at register.	Tippable
0:00:50	Take customer to table.	Tippable
0:00:20	Talk to server and tell her table assignments.	Nontippable

## Questionnaire

A job analysis questionnaire allows employees to self-report their work experiences, such as time spent performing tasks, in a structured manner. A questionnaire typically includes multiple sections, each designed to collect data about a different aspect of the job. The questionnaire is often structured to reflect the range of tasks employees may perform. Individual tasks can be grouped into “task areas,” which can then be grouped into “work categories.” This structure can then be used to facilitate accurate self-reports of relative time spent (i.e., percent of total work time spent performing tasks). An illustrative example of a partial work category and task area structure is shown below in Table 2.

**Table 2: Example of Partial Work Category and Task Area Structure**

WORK CATEGORY	TASK AREAS	PERCENT OF TIME WORKING IN TASK AREA
<b>Customer Service (Tippable)</b>	<b>Serving Customers</b>	70%
	<b>Directing Customer Service and Dining</b>	30%
	<b>Total of Customer Service =</b>	<b>100%</b>
<b>Food Preparation (Nontippable)</b>	<b>Preparing and Cooking Food</b>	30%
	<b>Managing Food Preparation and Safety</b>	70%
	<b>Total of Food Preparation=</b>	<b>100%</b>

## Structured Interview

The structured interview is a method for collecting self-reports verbally from a sample of employees. This method often results in detailed, qualitative data in addition to numeric ratings and percentages. If

there are unique, unpredictable or highly technical aspects to the work, structured interviewing is an effective method for capturing that information in standardized fashion. An illustrative example of structured interview questions and responses are shown in Table 3 below.

**Table 3: Example of Task Areas and Details Reported**

Task Area	General Description	Describe what work you personally do in each Task Area	Category
<b>Guest Service</b>			
1. Serving Guests Food	Greet guests and walk them to their table. Take drink and food orders and deliver food to table.	I have the back area of the restaurant typically and I have my regulars who come in. They like to talk to me because I think this is their social outlet so I spend time speaking with them.	Tippable
2. Processing Guest Payments	Ring customer purchases up at the register.	Since they are leaving I like to ask guests how their meal went and whether they received everything they wanted. This gives them a good feeling about their dining experience and makes them more likely to come back.	Tippable

## Results

While additional factors may need to be considered,[6] the methods describe in this article can reliably measure the amount of time employees spend performing tippable activities. This data can be relied upon to make operational and policy decisions. An illustrative example of study responses is shown in Table 4 below.

**Table 4: Example of Study Results - Average Time Spent By Task Area**

Task Areas	Status	Average
1. Serving Guests and Processing Payments	Tippable	82.0%
2. Overseeing Guest Service	Nontippable	2.2%
3. Directing Guest Service	Nontippable	1.6%
4. Preparing Food	Nontippable	1.7%
5. Overseeing Food Preparation	Nontippable	0.1%
6. Processing Inventory	Nontippable	1.1%
7. Controlling Inventory	Nontippable	1.4%
8. Managing Personnel	Nontippable	0.3%
9. Training and Development	Nontippable	2.1%
10. Controlling Labor Hours	Nontippable	1.0%
11. Managing Store Performance and Profitability	Nontippable	2.0%
12. Cash Handling and Preventing Loss	Nontippable	2.0%
13. Cleaning and Maintaining Facility and Equipment	Nontippable	1.5%
14. Overseeing Facility Maintenance	Nontippable	1.0%
<b>Total Time Tippable Work</b>		<b>82.0%</b>
<b>Total Time Nontippable Work</b>		<b>18.0%</b>
<b>Total Work Time</b>		<b>100.0%</b>

## Summary

The legal landscape regarding the use of tip credits appears to be in flux. For organizations interested in determining how employees spend their time, several valid methods exist to measure this time and provide reliable information.[7]

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[1] A “tip credit” is a pay practice in which an employer takes a credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13) and the federal minimum wage (<https://www.dol.gov/whd/flsa/tipcredit-faq.htm>).

[2] U.S. DOL, Opinion Letter FLSA2018-27 (Nov. 8, 2018).

[3] We do not offer a legal analysis or any opinion on whether tip credits are appropriate or legally permissible. Our focus is to describe methods to evaluate relevant factors.

[4] For example, see the following Law360 articles: Elizabeth Arnold, “Measuring Control And Direction Under Dynamex” (May 30, 2018), available at: <https://www.law360.com/articles/1047637/measuring-control-and-direction-under-dynamex-abc-test>; Elizabeth Arnold and Chester Hanvey, “Calif. Employer's Guide To Tracking Off-The-Clock Tasks” (Aug. 8, 2018), available at: <https://www.law360.com/articles/1069548/calif-employer-s-guide-to-tracking-off-the-clock-tasks>.

[5] See, e.g., Edward Levine, Frederick Morgeson, and Michael Brannick, *Job and Work Analysis, Methods, Research, and Applications for Human Resource Management*, SAGE Publications (2007).

[6] For example, sampling strategy, employers’ expectations, variability.

[7] For additional information on the research methods described in this article, see Chester Hanvey, *Wage and Hour Law: Guide to Methods and Analysis*, Springer (2018).