

Hard Rock Cafe Rocked By FLSA Action Over Tips

By James Armstrong

Law360, New York (April 29, 2010) -- Members of the waitstaff for Hard Rock Cafe International Inc. have filed a putative class action challenging the restaurant chain's payment and gratuity distribution practices, which the plaintiffs claim violate the Fair Labor Standards Act.

Hard Rock broke the law by paying waitstaff an hourly rate less than the federal minimum wage and forcing them to turn over a portion of their tips to nonwaitstaff employees, according to an amended complaint filed Wednesday in the U.S. District Court for the Middle District of Florida.

Waitstaff have not been allowed to take a tip credit against the minimum wage as they are entitled to under the law, according to the complaint.

While the gratuity/service charge for private dining events held at Hard Rock restaurants typically ranges between 18 and 20 percent, that money is allegedly retained by the company.

The Orlando, Fla.-based chain is unjustly enriched through the misrepresentation of this charge as a gratuity and tortiously interferes with the employees' relationship with customers, who reasonably believe the service charge goes to the waitstaff, according to the complaint.

Hillary Schwab, an attorney with Lichten & Liss-Riordan PC who represents the employees in the case, said she had seen a number of cases where restaurants tried to grab gratuities for themselves, even though waitstaff employees were making less than minimum wage.

Restaurants also sometimes have "tip-out" policies that force waitstaff to share their tips with managers and kitchen staff, according to Schwab.

The Hard Rock complaint specifically alleges the company turned over a portion of tips to kitchen workers known as expeditors.

"My experience is that it's not unusual for restaurants to try to spread it around to other people," Schwab said.

The FLSA exempts waitstaff employees from the minimum wage provided they receive tips for their services, and these tips can be shared with bussers and bartenders who also participate directly with the serving of the food, according to Schwab.

However, people who are not directly involved in the serving of food, such as managers or kitchen workers, are not entitled to a share of tips for the waitstaff, Schwab said.

There have been other cases challenging unlawful tip-outs under the FLSA, some of which have been settled, according to Schwab.

The allegations in the lawsuit do not accurately reflect how Hard Rock pays its employees or treats service charges, the company said in a statement.

“Hard Rock's pay practices fully comply with the law, and the allegations in this lawsuit are baseless and inconsistent with the facts,” the company said.

Jason Heath and Robert Pierce filed the original complaint in the matter in March, but the amended complaint adds named plaintiff Aurelia Eisenzopf and adds several related Hard Rock companies as co-defendants.

Baker & Hostetler LLP represents Hard Rock in the case. Counsel was not immediately able to comment.

Lichten & Liss-Riordan PC represents the employees in the matter.

The case is Jason Heath et al. v. Hard Rock Cafe International Inc., case number 10-344, in U.S. District Court for the Middle District of Florida.