

# The Boston Globe

## US Labor Dept. investigating Upper Crust chain

By Jenn Abelson, Globe Staff

July 21, 2010

The US Department of Labor is investigating new allegations of wage law violations at the Upper Crust pizzeria chain, according to several people involved in the inquiry.

The federal investigation comes after the agency last year ordered Upper Crust LLC to pay more than \$341,000 to about 121 workers for uncompensated overtime, following complaints from employees. Last week, two former Upper Crust cooks filed a lawsuit that accuses the company of taking back the federally ordered payments by deducting the money from their weekly paychecks.

Carlos Matos, an investigator at the Labor Department, has already interviewed some former Upper Crust employees -- including a manager and cook -- along with several current workers, according to the people involved in the investigation. Matos declined to comment.

Neal B. Siskind, an attorney representing Upper Crust, which has 17 restaurants in Massachusetts, wrote in an email to the Globe: "There will be no further comment on alleged pending matters until such time as my office has had an opportunity to review documentation filed by either former employees and/or the Department of Labor."

A former Upper Crust manager said he told federal officials that employees who received overtime settlements last August were told they had to quit their jobs if they wanted to keep the checks, or effectively give the money back by taking a pay cut. The former manager -- who requested anonymity because the investigation is ongoing -- said the employees, who were mostly Brazilian immigrants and routinely worked 70 to 80 hours a week, were also changed from hourly staff to salaried employees so the company could avoid paying overtime.

"These were guys rolling pizza and making dough," the former manager said of the Brazilian workers. "There's no accountability for anything." The owners "did whatever they wanted to make money," he said.

Jordan Tobins, one of the chain's owners, confirmed in an e-mail to the Globe last week that pay rates were scaled back last August because Upper Crust needed to reduce payroll. But he also added that the two former cooks who filed the lawsuit last week in Suffolk Superior Court were promoted from hourly workers to kitchen managers last summer.

Valdeir Pereira Pinto, one of the former cooks suing Upper Crust, said he was not a kitchen manager. Pinto, who worked at the Upper Crust restaurant on Commonwealth Avenue in Boston, said he discussed

with Matos at the US Department of Labor how the company, after making the lump restitution payments for overtime, deducted hundreds of dollars from his weekly paycheck and fired him after Upper Crust recovered its money.

"I spoke to [Matos] about the money they took back," Pinto said.

The initial investigation, which looked at pay practices at Upper Crust from April 2007 through April 2009 found hourly workers were paid straight time even after they exceeded 40 hours in a week. For example, Pinto received two checks for the week ending Jan. 5, 2008, earning \$400 at \$10 an hour for the first 40 hours and \$305 for an additional 30.5 hours, according to copies of paychecks provided by his lawyers.

A time card for the week ending Sept. 27, 2009, a month after the overtime payments, show Pinto worked 72 hours. But he only received one check for \$455. He earned the same amount for the week ending Dec. 6 2009 even though he worked longer -- 80.5 hours, according to records supplied by his lawyers.

Lydia Edwards, a volunteer attorney at the Brazilian Immigrant Center in Brighton, said the office has referred at least five current and former Upper Crust employees to the US Department of Labor to aid in its investigation.

"This is an unfortunate situation that many immigrant workers and workers in general have to face to get paid a decent wage," Edwards said. "It also demonstrates that even in situations when you are willing to work with an employer, some employers insist on exploiting their workers."