



Hard Rock Cafe in Minimum Wage Class Action Suit

By Lisa Johnson Mandell, Posted Jan 19th 2011 @ 12:15PM



Greg Davis / Alamy

The world's largest Hard Rock Cafe at Universal Studios in Orlando, Fla., is not even doing the minimum for some of its servers and bartenders, according to two workers who filed a class action lawsuit. They claim the Hard Rock failed to pay minimum **wages** required under Florida law. It is likely that more employees will join in the suit.

The complaint alleges that Hard Rock's servers and bartenders were paid less than minimum **wage** between Jan. 14, 2006 and approximately July 2009.

The complaint asserts that Hard Rock attempted to pay the servers and bartenders less than minimum wages while taking a tip credit allowable (in certain cases) under Florida and federal law. It seems that the law is designed to allow for the credit only in cases where the servers and bartenders either are allowed to retain all of their tips, or pool their tips exclusively with other tipped employees.

Hillary Schwab, of Lichten & Liss-Riordan in Boston, Mass., said, "In this economy, servers and bartenders need all the tips they can get. Hard Rock should have known that a tip-sharing arrangement that included kitchen staff violated Florida

and federal law."

The Florida Constitution, Article X, Section 24(a) ("FMWA") provides that "[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families." In doing so, FMWA permits employers to pay less than the Florida minimum wage to employees who receive tips *only if* the eligibility requirements for the tip credit under the Federal Fair Labor Standards Act ("FLSA") are met. If an employer satisfies the tip credit requirements, it may apply a portion of the **employee's** tips (up to a maximum of \$3.02 per hour) to satisfy its own minimum wage obligation.

Florida's minimum wage provision has recently been in the news because the Florida Agency for Workforce Innovation was sued for allegedly improperly calculating the minimum wage under Florida law.