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Tipped Workers Hit Fla. Hard Rock With Wage Action

By Jesse Greenspan

Law360, New York (January 18, 2011) -- Hard Rock Cafe International Inc. was smacked with a putative class action Tuesday alleging servers and bartenders at its Orlando, Fla., restaurant were illegally paid less than minimum wage.

The complaint, lodged in Circuit Court in Orange County, Fla., said that Florida and federal law allows companies to use a portion of tips to satisfy minimum wage obligations only when servers and bartenders retain all of their tips or when servers and bartenders set up a tip pooling arrangement.

But at the Hard Rock Cafe's Orlando restaurant, servers and bartenders improperly shared their tips with kitchen employees who were responsible for ensuring food was prepared and garnished properly, according to the complaint.

"Defendant utilized the tip credit to pay employees who served food and/or beverages to defendant's customers an hourly wage rate that was less than the minimum wage ... even though those employees did not retain all of their tips and paid a portion of their tips to kitchen employees called 'expeditors' who are not customarily and regularly tipped employees and are not engaged in service to customers," the complaint said.

It added that the alleged wrongdoing occurred from January 2006 to July 2009.

"This case is unique because it is one of the first class actions filed solely using the minimum wage provisions of the Florida Constitution, which has a five-year statute of limitations for willful violations and provides for full recovery of the minimum wages and an equal amount of liquidated damages," said Sam J. Smith, an attorney at Burr & Smith LLP who is representing the plaintiffs.

Hillary Schwab, an attorney at Lichten & Liss-Riordan PC who is also representing the plaintiffs, added that, 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," Schwab said.

Although she did not know the exact number of potential class members, she pointed out that the Orlando restaurant was the largest Hard Rock Cafe in the world.

For its part, Hard Rock said the allegations in the lawsuit did not accurately reflect how it pays its employees and how it complies with the law.

"Hard Rock's pay practices fully comply with the law, and the allegations in this lawsuit are baseless and inconsistent with the facts," the restaurant chain said. "Hard Rock intends to vigorously defend its pay practices and refute these frivolous claims."

In April, Schwab's firm filed an action in federal court alleging Hard Rock violated the Fair Labor Standards Act. That suit made similar allegations to the current one, but a judge ended up denying the plaintiffs' motion to certify the case as a collective action.

The plaintiffs, including named plaintiffs Christopher Grant and Benjamin Aguda, are represented in the latest matter by attorneys from Burr & Smith LLP and Lichten & Liss-Riordan PC.

Counsel information for Hard Rock Cafe was not available.

The case is Grant et al. v. Hard Rock Cafe International (Orlando) Inc., in the Circuit Court of the Ninth Judicial Circuit In and For Orange County, Fla. The case number was not listed.