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United Skycaps Launch FLSA Action Over Tips

By Jocelyn Allison

Law360, New York (October 07, 2009) -- Following a loss in their state law case, several workers who run United Airlines Inc.'s curbside check-in service have filed a new putative wage-and-hour class action alleging the airline's bag fee policy violates federal labor law.

The skycaps filed suit Tuesday in the U.S. District Court for the District of Massachusetts, alleging the airline's decision in 2005 to start collecting \$2 per bag for curbside check-in deprived workers of their tips.

The complaint accuses the airline of violating the Fair Labor Standards Act by paying skycaps less than the federal minimum wage, and claims the airline should not be allowed to take a tip credit against their wages because the skycaps are not allowed to keep all their tips.

The plaintiffs are paid a base wage that is less than the federal minimum wage and less than the minimum wage in several states, which is allowed under labor law if they make a certain amount in tips to make up the difference, according to the suit.

Skycaps have traditionally made most of their money through tips from airline passengers, but in 2005, the airlines started charging a \$2 fee per bag, which the airline would keep or share with contractors, the complaint contends.

Skycaps have argued in a number of lawsuits against airlines that customers are not aware of the change to a mandatory fee, and continue to assume that the \$2 was a tip to the workers handling their bags.

The plaintiffs are required to hand over \$2 for every bag checked, regardless of whether they collect the fee from the customer, which means they are forced to make up for any shortfall out of their tips, the complaint alleges.

According to the suit, United should be considered a joint employer of the skycaps, even though the airline contracts with third parties for curbside service and the contractors issue the skycaps' paychecks.

"The airlines have tried to disclaim responsibility for wage issues regarding skycaps by contracting out curbside check-in to these so-called contractor companies, and we're taking them to task for that and saying, 'No, they actually employ the skycaps,'" said Shannon Liss-Riordan of Lichten & Liss-Riordan PC.

Liss-Riordan is still fighting to keep the plaintiffs' claims under state law alive, despite Judge Nancy Gertner's Sept. 22 decision granting United's motion to dismiss the case. The judge ruled that the claims were preempted by the Airline Deregulation Act.

The plaintiffs have filed a motion for reconsideration, and if it is granted, the judge has said she would entertain the plaintiffs' pending motion for class certification, said Liss-Riordan, who is also pursuing cases against JetBlue Airways Corp., U.S. Airways Inc. and American Airlines Inc.

A representative for United could not immediately be reached for comment Wednesday.

The plaintiffs are represented by Lichten & Liss-Riordan PC.

Counsel information for United was not immediately available.

The case is Butcher et al. v. United Airlines Inc., case number 09-cv-11681 in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Melissa Lipman

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