

Hard Rock Cafe Servers and Bartenders Sue for Minimum Wage



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ORLANDO, Fla., Jan. 18, 2011 /PRNewswire/ -- Two Hard Rock Cafe International (Orlando), Inc. ("Hard Rock") employees, who worked in the Hard Rock Cafe at Universal Studios in Orlando, today filed a class action lawsuit against Hard Rock for the company's alleged failure to pay minimum wages that were required under Florida law. The Orlando Hard Rock Cafe is the largest Hard Rock Cafe in the world. The case was brought under the minimum wage provisions of Florida's Constitution, which was passed by citizen's initiative and became effective as of May 2, 2005.

The putative class action was filed in Circuit Court in Orange County, Florida. The complaint alleges that Hard Rock's servers and bartenders were paid less than minimum wage during the period January 14, 2006 until 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 under Florida and federal law only when the servers and bartenders are allowed to retain all of their tips or where a legal tip pooling arrangement is instituted among employees "who customarily and regularly receive tips."

The complaint alleges that servers and bartenders improperly shared their tips with individuals who were employed as expeditors. The complaint asserts that the expeditors at the Orlando Hard Rock Cafe are not customarily and regularly tipped employees; instead, they are kitchen employees who are responsible for ensuring food is prepared and garnished properly. The Complaint alleges that Hard Rock was not entitled to the tip credit because servers and bartenders did not retain all their tips and paid a portion of their tips to expeditors.

Sam J. Smith, Burr & Smith, LLP, Tampa, stated, "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." Hillary Schwab, Lichten & Liss-Riordan, P.C., Boston, Massachusetts, added, "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. *Id.* at section 24(c). 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.

To utilize the tip credit under the FLSA, and therewith the FMWA, the employer must allow its tipped employees to retain all the tips they receive, except when there is a valid arrangement for "pooling of tips among employees who customarily and regularly receive tips." 29 U.S.C. section 203(m). If an employer fails to satisfy this requirement, it may not take advantage of the tip credit and must directly pay its tipped employees the full minimum wage.

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.

Plaintiffs are represented by the law firms of Burr & Smith, LLP (www.burrandsmithlaw.com) and Lichten & Liss-Riordan, P.C. (www.llrlaw.com).

Persons who have evidence regarding this case or who wish to contact Plaintiffs' counsel may call or email:

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