

Judge Rules FLSA Suit Against Chili's Can Proceed

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Friday, Jul 11, 2008 --- A group of restaurant employees can proceed with its class action against Chili's Bar & Grill for allegedly forcing the employees to share tips with supervisors in violation of the Fair Labor Standards Act, a judge has ruled.

In an order filed July 9 in the U.S. District Court for the Southern District of Texas, Judge Keith Ellison denied the defendant's motion for summary judgment and ruled that the plaintiffs had presented sufficient evidence for the case to continue to trial.

Attorneys for Brinker International, which operates Chili's, Romano's Macaroni Grill and On The Border Mexican Grill & Cantina, declined to comment on the case.

The lawsuit began in November 2005 when Jennifer Roussell, a former food server at a Chili's restaurant in Texas, sued her employer for violating the Fair Labor Standards Act by forcing its servers to share their tips with supervisors.

The class covers over 3,500 servers who worked at Chili's restaurants between August 2003 and August 2006. The suit seeks to recover unpaid wages, as well as attorneys' fees and costs.

According to the complaint, the defendant required servers to contribute a portion of their total gross sales during each shift to a tip pool between bartenders, bussers and supervisors. The plaintiff argues that because the servers were forced to share their tips with supervisors, the tip pool was invalid and Chili's improperly used tip credits to calculate servers' pay.

In 1966, Congress added restaurant workers to the FLSA and created the concept of a "tip credit," which allowed employers to take a credit for tips received by a tipped employee for up to 50% of the minimum wage.

In 1974, Congress added a section to the law stating that a "tipped employee" must retain all tips received by the employee. The new section did not prohibit tip pooling among employees.

In its motion for summary judgment filed in December, the restaurant argued that even if it required servers to share tips, this would not violate the FLSA because supervisors are eligible to participate in mandatory tip pools under the law.

Chili's also argued that because supervisors perform some of the same duties as the servers, they are eligible for tips and entitled to participate in a tip pool.

But the court ruled that the level of customer interaction is highly relevant to the question of whether an employee may participate in a valid tip pool because employees that are visible to and interact with the public also are likely to make greater contributions to customer service.

“Where employees perform some duties that entail customer service and others that do not, the employees' level of direct customer interaction is critical to a determination of whether the employee may participate in a mandatory tip pooling arrangement,” the court said.

The court said it believed that a reasonable jury could find that the Chili's supervisors had only minimal direct interaction with customers because many of the defendant's witnesses and almost all of the opt-in plaintiffs appear to testify that the supervisors rarely performed the duties of servers.

Rex Burch, an attorney for the plaintiffs, said that the decision was significant because it affects every restaurant in America that has minimum wage requirements.

“It reaffirms what Congress intended the law to be,” Burch said.

The plaintiff is represented in this matter by Shellist & Lazarz LLP and Bruckner Burch PLLC.

The defendant is represented in this matter by Akin Gump Strauss Hauer & Feld LLP.

The case is Jennifer Roussell v. Brinker International Inc., case number: 05-cv-03733, in U.S. District Court for the Southern District of Texas.