

Federal Judge Allows Wage Lawsuit Against 23 Applebee's Restaurants To Proceed

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A federal judge granted certification in a class action lawsuit accusing 23 Applebee's restaurants in West Virginia, Virginia, Ohio and Kentucky of violating federal wage laws. Current and former tipped employees will now receive notice of the case and the opportunity to join in.

The lawsuit claims that the restaurants failed to pay hosts, servers, and bartenders the minimum wage for their time spent performing non-tipped work, such as cleaning the parking lot and washing dishes. The lawsuit also asserts that the restaurants inflated employees' reported tips to avoid paying minimum wage.

The class action, against Employee Resource Group, LLC, Neighborhood Hospitality, Inc., and WV Neighborhood Hospitality, LLC, was filed on behalf of April Hill and other employees by Sandra Henson Kinney of Bailey Glasser's Charleston, West Virginia, office and Elizabeth Ryan of the firm's Boston office.

The defendants opposed the motion for a certification, arguing that because their employees must sign a binding arbitration agreement, most would not be able to join a class action lawsuit. U.S. District Judge Irene Berger ruled that it was premature to consider the alleged arbitration agreements and granted certification, allowing notice of the lawsuit to be sent to potential plaintiffs.

The Fair Labor Standards Act allows employers to pay tipped employees less than the \$7.25 an hour federal minimum wage and take a "tip credit" so long as that credit never exceeds the amount of tips actually received by an employee. In addition, employers may not pay tipped employees less than minimum wage for time when they are required to perform unrelated non-tipped work, or when related non-tipped work exceeds 20 percent of the employee's time during a workweek.

Hill worked as a hostess at an Applebee's in Beckley, West Virginia. She was treated as a tipped employee and paid \$4.25 an hour, even, the complaint alleges, when performing non-tipped work like cleaning the parking lot and when her tips were less than the \$3 an hour "tip credit" taken by the restaurant. The complaint also alleges that after she resigned, the restaurant did not pay the

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wages owed her in a timely fashion.

Attorneys

Elizabeth Ryan

Practice Areas

Labor & Employment