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Worker Says Florida Burger Joint Pooled Tips with Bosses

By **Parker Quinlan**

Law360 (April 19, 2023, 8:17 PM EDT) -- A drag-themed hamburger franchise in Florida illegally pooled tips and paid employees a subminimum wage for non-service work, according to a worker's potential class and collective action filed in federal court.

The server at Hamburger Mary's, a chain with locations in eight states, accused franchisee HKM Pinellas LLC of a variety of violations of federal and state employment law, including giving managers and supervisors access to the pool of servers' tips and paying servers a subminimum wage for doing tasks such as setting up tables and cleaning soda machines.

"Plaintiff and the putative class did not voluntarily share their tips with supervisors, managers and/or team leads," the worker, Natalie Rohde, said in the suit, filed Monday in the U.S. District Court for the Middle District of Florida. The restaurant violated the Florida Constitution's minimum-wage requirements "by requiring servers to share their tips with non-tipped employees (such as supervisors, managers and team leads)."

Rohde, who was hired at Hamburger Mary's in Clearwater in 2022, said in the suit that she would seek certification of five federal and Florida Minimum Wage Act classes and four Fair Labor Standards Act classes for her colleagues, who likewise were subject to the violations.

The suit alleges that tipped workers would spend more than 20 percent of their workday performing non-tipped work. This included setting up an outdoor patio with chairs and closing serving stations at the end of the night. On evenings and weekends, the restaurant, which calls itself an "open-air bar and grille for open-minded people," features drag shows, charity bingo and karaoke.

In addition to the untipped work, some employees did not receive a wage increase in line with a 2022 increase in the state, according to Rohde. In October, Florida increased the minimum wage from \$10 an hour to \$11, though the suit claims that some employees continued to receive their pre-increase pay.

Rohde also claims that she was subject to a tip credit, a kind of wage calculation that is often used by hospitality employers to offset the minimum wage paid to the employee. According to Rohde, the company violated the Fair Labor Standards Act by not disclosing the tip credit to workers.

According to Jordan Lee Richards, one of Rohde's attorneys, the violations at Hamburger Mary's in Clearwater are part of a broader problem for people who work for tipped wages.

"The Clearwater location is independently owned and operated, and we're going to pursue the one location, but our investigation remains ongoing," Richards said in an interview with Law360 Tuesday. "In our position on this, these are recurring trends in the restaurant industry that are occurring in Florida and across the country."

In addition to seeking repayment of the tip credit and any tips withheld by Hamburger Mary's, Rohde's lawsuit seeks to recover the minimum wage the restaurant did not pay following the statewide increase.

A representative for HKM Pinellas LLC declined to comment on the allegations on Wednesday.

A spokesperson for the national Hamburger Mary's brand did not immediately respond to a request for comment.

Natalie Rohde is represented by Michael V. Miller and Jordan Lee Richards of USA Employment Lawyers.

Counsel information for HKM Pinellas LLC was not immediately available.

The case is Rohde v. HKM Pinellas LLC, case number 8:23-cv-00829, in the US District Court for the Middle District of Florida.

--Editing by Karin Roberts.

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