

Class Action Revived in Suit Alleging P.F. Chang's Shortchanged Their Employees

Most states have some type of reporting pay law so that when an employer schedules an employee to work, the employee is guaranteed some minimum amount of work or pay. Every state's requirement has its own rules and most would not apply the guarantee to those situations where an employee asks to leave. However, the failure to pay the guaranteed minimum is still rife with risk when not documented properly.

For eight years, Felice Gammella worked at multiple P.F. Chang's restaurant locations performing a variety of tasks, including greeting customers, helping behind the bar, running food, and assembling delivery orders. P. F. Chang's paid Gammella, along with servers, bartenders, hosts, and other staff, on an hourly basis at the minimum wage.

In November 2014, Gammella sued under the Massachusetts Wage Act, alleging that P. F. Chang's routinely denied employees pay for reporting to work. Specifically, he alleged that P.F. Chang's had a common practice that violated the "reporting pay" or "three-hour" requirement, which requires Massachusetts employers to pay employees three hours' wages at no less than the minimum wage if they report for a scheduled shift of three or more hours but are involuntarily dismissed before they have worked three hours. Gammella testified that on numerous occasions, despite being scheduled to work three or more hours, he was dismissed against his wishes and forced to clock out before he had worked the minimum hours. On those occasions, he was not given three hours' pay, but was only paid for his actual hours worked.

Although P.F. Chang's claimed that its policy was to comply with the three-hour reporting requirement, it produced no evidence that it had ever done so. Rather, the reports it produced revealed that, in 20 instances involving Gammella and approximately 7,000 instances involving hundreds of other employees, it did not provide reporting pay when employees clocked out before they worked three hours. A company official claimed that the employees had voluntarily asked and were granted permission to leave before three hours elapsed.

Gammella's lawyer moved to certify a class of employees who worked less than three hours of a scheduled shift without receiving reporting pay. Relying on an opinion letter interpreting the reporting requirement from the state's Executive Office of Labor and Workforce, the trial court denied class certification, concluding that an employer did not have to provide reporting pay where an employee chose to leave work before completion of a three hour scheduled shift, "completely on a voluntary basis." The trial court found that it was impossible to determine whether any employees would fall in the class, and so concluded that the class was insufficiently numerous to satisfy the certification requirements, or Massachusetts Rule of Civil Procedure 23 (Rule 23).

After class certification was denied, the employer made two settlement offers to Gammella that claimed to provide complete relief to his individual claim, but he rejected both of them. P.F. Chang's then moved to dismiss the case on the grounds that by rejecting the offers of settlement,

Gammella had mooted his claim. The employer also argued that the employee did not have standing to serve as class representative for any putative class he might seek to revive. The Massachusetts Supreme Court then transferred the matter from the Court of Appeals on its own motion.

The Massachusetts Supreme Court ruled that due to a combination of thousands of instances where P.F. Chang's failed to accurately pay hundreds of employees for dismissing them from scheduled shifts before they had worked three hours, the absence of any recordkeeping related to whether the departures were voluntary thus justifying the non-payments, and the employer's refusal to provide the names of the employees involved, made it reasonable to infer that the large number of employees would satisfy the requirement for a class action suit. Finding sufficient evidence that the employer may have shortchanged employees who were dismissed early from scheduled shifts, the state high court reversed the judgment of the trial court denying class certification.

This decision makes clear the importance of creating and maintaining good documentation systems for potential wage and hour issues. In this case, while likely the vast majority of the employees likely left work voluntarily, with no records to substantiate what happened, the employer is left at the whim of an employee or ex-employee who sees the chance to get a settlement.