

Workers at Delmonico's say restaurant company skirted minimum wage laws

Tipped employees say eatery violated wage laws

By Larry Rulison

Workers at Delmonico's Italian Steakhouse, which has locations in Colonie and Clifton Park, claim management circumvented minimum wage laws by forcing bartenders and servers who work for tips to do cleaning, food prep and other jobs that pay higher wages.

The suit, originally filed in September in U.S. District Court in Rochester but transferred on Feb. 9 to the Northern District of New York, which has a courthouse in Albany, comes amid an attempt by Gov. [Andrew Cuomo](#) to raise the minimum wage to \$15 an hour. The issue is expected to be fiercely debated during the upcoming state Legislature session and follows several recent increases to the minimum wage.

Two employees of Delmonico's Colonie location, [Jessica Varno](#) and Derek Toussaint, are named as plaintiffs in the complaint, which seeks class action status.

Another two plaintiffs have since been added: Melanie Gallipali and [Lesley Diana Joy](#), although their work location could not immediately be identified.

The attorney for the plaintiffs, [Brian Schaffer](#) of the New York City employment law firm of [Fitapelli & Schaffer](#), could not be reached Monday. His firm filed a similar case against Dinosaur Bar-B-Que last year.

The Delmonico's workers claim they should have been paid the higher minimum wage because they were forced to do work for two hours a day that kept them from getting tips and entitled them to higher wage rates. They also claim they were not paid overtime wage rates and that management shared a portion of their tips with non-tipped workers.

Full-scale restaurants are allowed to pay workers like servers and bartenders a lower minimum wage because they earn tips. In New York state, the minimum wage for these types of workers is \$7.50 an hour, while the statewide minimum wage is \$9 an hour, although fast-food workers are paid \$9.50 an hour upstate.

The law assumes that bartenders and servers are earning at least \$1.50 an hour in tips.

Delmonico's has locations in Colonie, Clifton Park, Utica, Syracuse, Orlando, Fla., and Rochester.

Because the suit moved courts recently, Delmonico's has until this week to file an answer. Owner [John Wade II](#) is listed as the defendant.

Called at his Utica office, Wade was not immediately available. His attorney, [Craig Benson](#) of [Littler Mendelson](#) in New York City, could not immediately be reached for comment either.