

Rosa Mexicano Hit With Nationwide FLSA Class Action

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Law360, New York (July 11, 2016, 12:06 PM ET) -- Four former Rosa Mexicano service employees filed a putative nationwide class action against the upscale Mexican restaurant chain in New York federal court Friday, claiming it routinely violated state and federal labor laws by, among other things, failing to pay overtime and minimum wages.

The workers, who include servers, bussers and food runners at Rosa Mexicano Brands Inc. locations in New York and Massachusetts, claim the restaurant illegally cut its labor expenses by paying employees at the tipped minimum wage without complying with the reduced wage requirements of the federal Fair Labor Standards Act and similar laws in New York and Massachusetts.

According to the complaint, the chain pays its service employees at 12 of 14 U.S. locations at the tipped minimum wage — a reduced wage for employees whose tipped pay exceeds the minimum wage — despite failing to satisfy the requirements under the FLSA, New York Labor Law and Massachusetts wage laws that would allow it to do so.

The workers claim the chain did not properly notify them of the tip credit provisions of the laws, did not account for automatic gratuity when calculating its employees' overtime pay, and forced them to share some of their tips with nonservice employees called "floaters," who were not eligible for tips. The workers also claim the restaurant fails to pay its service employees time-and-a-half for hours worked over 40.

The workers aim to represent a class of all current and former employees at most Rosa Mexicano restaurants nationwide designated as tipped employees under the Fair Labor Standards Act. The suit also includes classes current and former New York and Massachusetts employees, raising claims under the states' respective labor laws.

State-specific claims include accusations that Rosa Mexicano New York locations failed to properly pay its workers who were called in for shifts outside their regular working hours but sent home early.

The workers seek unpaid minimum, overtime and other wages and misappropriated tips, plus statutory penalties for the restaurants' alleged failures to fulfill the labor laws' notice requirements.

The chain has 12 U.S. locations in the New York City, Miami and Washington, D.C., areas, Boston and Georgia. The chain also has restaurants in Puerto Rico and the United Arab Emirates, but the instant suit only names the U.S. locations. The workers also spared locations in California and Minnesota.

The firm representing the workers, Fitapelli & Schaffer LLP, is also involved in other wage class actions including those [against casual dining chain](#) TGI Friday's and [New York area car dealership chain](#) Major World.

Attorneys for the workers and representatives for the restaurants did not immediately respond Monday to requests for comment.

The workers are represented by Joseph A. Fitapelli, Brian S. Schaffer and Armando A. Ortiz of Fitapelli & Schaffer LLP.

Attorney information for Rosa Mexicano was not available Monday.

The suit is Edwin Suarez et al v. Rosa Mexicano Brands Inc., case number [1:16-cv-05464](#), in the U.S. District Court for the Southern District of New York.

--Additional reporting by Kelly Knaub and Joyce Hanson. Editing by Rebecca Flanagan.