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## Zara Workers Nab Collective Cert. In OT Suit

By **Daniela Porat**

Law360 (May 4, 2021, 5:28 PM EDT) -- Zara USA Inc. workers secured preliminary certification of their collective action after a New York federal judge found their claims had "significant detail" alleging the fashion brand shortchanged them on wages by excluding commissions from overtime calculations.

On Monday, U.S. District Judge Katherine Polk Failla said the workers' declarations and records concerning Zara's commissions program were enough to warrant conditional certification and ordered the parties to tackle the notification process.

The workers have "sufficiently established that there are similarly situated hourly employees who were undercompensated because their overtime rate failed to take the commission into account," Judge Failla wrote.

Latrell Gillett, Alex Swinton and Royale Adams worked at New York City-area Zara stores and claim the company wrongly omitted commissions awarded to stores for meeting certain revenue goals from their regular rates of pay. These commissions were divided among workers based on the number of hours they worked, according to court filings.

Under the Fair Labor Standards Act, employers must include nondiscretionary bonuses in a workers' regular rate of pay.

Judge Failla said both the former Zara employees' pay stubs and their declarations citing conversations they had with co-workers about the bonuses represent "more than enough" to meet the low standard of conditional certification.

The preliminary collective action includes stock and sales associates, cashiers and other hourly employees who worked for Zara or Inditex USA LLC, the brand's owner, at U.S. Zara retail stores and were not paid proper overtime between May 2017 and July 2019.

But the workers did not get everything they wanted.

They requested that the collective include people who were employed at Zara up until the present, but Zara argued such a group would be "vastly overbroad," according to a brief filed by the company, because the brand fully eliminated the commission programs at issue in the case by July 2019.

Judge Failla agreed with Zara and concluded the "time period for this collective action is properly cut off" in July 2019. Plus, Judge Failla wrote, the workers' pay stubs used to support their allegations against Zara all predate July 2019.

Judge Failla also shut down the workers' request for Zara to provide the Social Security numbers of potential opt-in collective members whose consent forms might be returned following failed delivery.

Judge Failla said such a request was premature and "the greater weight of authority goes against authorizing the collection of such sensitive information" at such an early stage.

Gillett filed the collective action against Zara and Inditex USA LLC in May 2020.

Attorneys for the workers and for Zara did not immediately respond to requests for comment Tuesday.

The workers are represented by Brian S. Schaffer and Hunter G. Benharris of Fitapelli & Schaffer LLP.

Zara and Inditex USA LLC are represented by Eli Z. Freedberg and Emma J. Diamond of Littler Mendelson PC.

The case is Gillett v. Zara USA Inc. et al., case number 1:20-cv-03734, in United States District Court for the Southern District of New York.

--Editing by Leah Bennett.

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