

## *Where's My Slice of the Apple? A Case Study*

### Summary

This case study examines the court case *Fast vs Applebee's* from 2006 regarding the fair pay of employees who were tip based employees seeking compensation for non-tipped work performed. Applebee's has continuously been growing and expanding its business since it started in 1980 by the name of TJ Applebee's Rx for Edibles & Elixirs from the original owners, Bill and TJ Palmer. Applebee's is the #1 casual-dining restaurant chain, with about 2,000 locations in the US and about 20 other countries, offering a wide variety of appetizers and entrees and is also listed at the #1 Casual Dining chain in FSR Magazine. In the magazine, the other top Ranking casual dining restaurants are #2 Chili's, #3 Olive Garden, #4 Red Lobster and #5 Buffalo Wild Wings (FSR 50, 2013). An issue arose in 2006 when an employee, Gerald A. Fast, brought to the courts two issues. First, Applebee's did not pay him minimum wage while he was performing his non-tipped duties and second, Applebee's did not pay him for the entire time that he worked as he had to arrive early, but was not paid for the 1 – 15 minutes before his actual shift started. Fast brought to the courts attention all the detail that would support this case.

The court ended up confirming that employees who were tip based employees that worked over 20% of their time in non-tipping activities were to be paid minimum wage.

The issue was in and out of the news from 2006 to 2012 when the case was settled with \$9 million ultimately being paid to the plaintiff, Mr. Fast, and other wait staff who chose to participate and had worked for Applebee's from June 2004 to the present time of the case.

### Teaching Objective

This case study is designed to review the importance of the detail needed on internal systems, such as the POS and timekeeping and understanding of laws and rights for the employees who are tip based employees as well as rights of the employers and how to manage tip based employees.

### Target Audience

The case study can be used for a variety of subjects and focuses including human resources, business law, Business Management, Hospitality and Risk Management. The issues presented in this study will benefit undergraduate students learning the basics of business law, ethics, general management and risk management. The study will be a teaching tool for graduate students to be able to propose crisis management plans and options for finding a less invasive way to handle the lawsuit. In addition, in the specific courses outlining Hospitality, this study can easily be used to discuss how these issues could have been

prevented. Dependent upon the detail of the students and the teachers, this can easily be expanded into a full research project and comparison to other similar situations in other restaurants and industries, and so on.

Below offers detail on recommended approaches to the use of this case study:

- Undergraduate Students: An instructor of undergraduate students should present the case and request the review of how all facets of the study fell into place to form the issue with the wait staff from the size of the company, to the technology and to the management of the situation and focus their view points from the franchisee, franchisor, and the staff.
- Graduate Students: An instructor of graduate students should allow students to review the outline and be able to assign the review of the laws detailed, review of the Department of Labor Handbook and offer more detailed understanding on resolution to this and other similar employee vs. employer arguments. This will allow an expansion on the different subjects outlined from each perspective, including the courts perspective on the case as well.

### Teaching Strategy

Subject areas outlined below are meant to be basic options for review and can be expanded upon or reviewed specifically dependent upon course material or necessity for subjects to be reviewed determined by the teacher. The strategy for this material is to provide a stepping stone into material that teachers and students are to then expand upon in their field of study.

#### *Human resources*

This case study provides an overview of the need for detailed packets to employees and the crucial need to outline and be well aware of time management. In addition, the case will also provide representation for the need to review and update technology used for human resource management based on the requirements of the law. This study will also assist in the understanding of the many facets of information that must be taken into consideration when managing employees.

#### *Business law*

This case study allows for the detailed review of the labor laws and surrounding definitions and complete detail of where to find lawful detail on all labor practices. This study discusses how imperative it is to have a full understanding of the definition of the law as it can be misinterpreted or interpreted differently, even by the courts and Department of Labor.

## ***Business Management***

This case study mentions typical business settings from franchising to restaurant management. These business management topics can be further studied through this case as a pertinent reference points when outlining a business plan and how to implement standards of practice for a restaurant or any business with tip based employees.

## ***Hospitality***

This case study will specifically be a review of the management items within the hospitality industry which include: restaurant management, franchise operations and tip-based employees and employers. Applebee's is an example of how hospitality ventures can start off as small, hometown businesses and grow to be at the top of the industry and can be used as an example for many hospitality topics and review items outlined in this case study.

## ***Risk/Crisis Management***

This case study provides an overview of both small and large scale crisis management opportunities. This would allow the class to review in-house risk/crisis management practices that should be in place. In addition, the case will provide the opportunity to review external risk/crisis management practices that should be in place such as; press/news and companywide issues that may arise.

## **Discussion Questions**

Consider yourself to be the franchise owner when presented with this case. What are the steps you would take to ensure that you are taking the correct stance and then work through the situation?

What are the advantages and disadvantages to the POS system Applebee's had in place? What detail can be provided to the system to update and correct the issues?

What impact has this case had on tipped employees? What detail needs to be reviewed in order to fully understand from the employer's perspective and the employee's perspective?

## **Additional Subject Review**

Much of this material can be used for reference in role play exercises where students are given the role of franchisor, franchisee, corporate and employee where the students would argue their points from each stand point and provide a course of action to be presented to the class on how their role would act and react to the situations. Then, once presented, consider, as a group, how resolve the issue(s) pertaining to this case in the most acceptable way. This exercise will provide a basis for critical thinking and research into laws, corporate requirements, employee handbook detail and other lawsuits for comparison.

During the time of studying this case study, teachers would benefit from assigning research of other similar lawsuits and updates that may be in the news on Applebee's franchises and the corporate man-

agement entity, Dine Equity.

## **Additional Readings**

Khan, M. A. (2015). *Restaurant Franchising* (Vol. Third Edition). Apple Academic Publishing, Inc.

Department of Labor, Wages Division

Department of Labor Field Operations Handbook <http://www.dol.gov/whd/FOH/index.htm>

Court Documents

Similar Court cases

Appendix A

Applebee's Class Action Litigation  
Claims Administrator  
P.O. Box 4390  
Portland OR 97208-4390

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

GERALD A. FAST, TALISHA CHESHIRE and  
BRADY GEHLING, on behalf of themselves and as  
class representatives for all others similarly situated,

Plaintiffs,

vs

APPLEBEE'S INTERNATIONAL, INC. d/b/a  
APPLEBEE'S NEIGHBORHOOD GRILL & BAR,

Defendant.

CASE NO. 06-4146-CV-C-NKL

NOTICE OF LAWSUIT AGAINST APPLEBEE'S INTERNATIONAL, INC.  
d/b/a APPLEBEE'S NEIGHBORHOOD GRILL & BAR

TO: All current and former employees who worked at an Applebee's restaurant at any time from June 19, 2004 to the present as a server and/or a bartender.

FROM: Charles A. Gentry  
Brian K. Stumpe  
CARSON & COIL, P.C.  
515 East High Street  
P.O. Box 28  
(573) 636-2177  
(573) 636-7119 (facsimile)  
e-mail: [Chip.G@carsoncoil.com](mailto:Chip.G@carsoncoil.com)

Matthew A. Clement  
Timothy VanRonzelen  
Kari A. Schulte  
COOK, VETTER, DOERHOFF & LANDWEHR, P.C.  
231 Madison  
Jefferson City, Missouri 65101  
(573) 635-7977  
(573) 635-7414 (facsimile)  
e-mail: [mclement@cvd1.net](mailto:mclement@cvd1.net)

DATE: September 7, 2007

RE: Right to join lawsuit against Applebee's International, Inc. d/b/a Applebee's Neighborhood Grill & Bar for its alleged failure to pay proper wages as required by the Fair Labor Standards Act.

**THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, BY THE HONORABLE NANETTE K. LAUGHREY. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PARTIES CLAIMS OR DEFENSES.**

**I. INTRODUCTION**

The purpose of this Notice is (1) to inform you of a lawsuit against Applebee's International, Inc. d/b/a Applebee's Neighborhood Grill & Bar (Applebee's) which you may have the right to join, (2) to advise you of how your rights may be affected by this suit, and (3) to instruct you on how to participate in this suit.

**II. DESCRIPTION OF THE LAWSUIT**

Plaintiffs Gerald A. Fast, Talisha Cheshire and Brady Gehrling brought this lawsuit on behalf of themselves and other current and former employees who worked at Applebee's at any time from June 19, 2004, to the present as a server and/or a bartender.

Form 10971 v.0.02

**Appendix A (continued)**

Plaintiffs allege that they are entitled to recover because Applebee's failed to pay them proper wages as required by the Federal Fair Labor Standards Act ("FLSA"). Specifically, Plaintiffs allege that Applebee's directed and/or permitted them to perform duties that would not generate tips such as general maintenance and/or preparatory work without paying proper wages for such work.

Plaintiffs seek to recover unpaid wages, liquidated damages, pre-judgment and post judgment interest, attorneys' fees and court costs.

Applebee's denies that it has improperly paid any current or former employee, and denies that any current or former employee is entitled to any additional compensation or other relief.

**III. WHO IS INCLUDED IN THIS LAWSUIT?**

All similarly situated current and former servers and/or bartenders who were at any time employed at an Applebee's restaurant from June 19, 2004 to the present. Specifically, Plaintiffs seek to represent any and all current or former servers and/or bartenders employed by Applebees at any time from June 19, 2004, to the present who also believe they were not properly compensated as described above.

**IV. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

If you are a current or former server and/or bartender at an Applebee's restaurant, employed at any time from June 19, 2004 to the present, and believe you fit the description above, you may join this lawsuit (that is, you may "opt-in"). Enclosed is a form called "Consent to Join." If you choose to join this lawsuit, **it is extremely important that you read, sign and promptly return the Consent to Join Form.** An addressed and postage paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be sent to:

Applebee's Class Action  
Litigation Claims Administrator  
P.O. Box 4390  
Portland, OR 97208-4390

**The signed Consent to Join form must be postmarked by December 6, 2007. If**

**you prefer, you can complete the form at [www.applebeesclassaction.com](http://www.applebeesclassaction.com).**

**If your signed Consent to Join form is not postmarked or received electronically by December 6, 2007, you will not participate in any recovery obtained against Applebee's in this lawsuit.**

**V. EFFECT OF JOINING THIS LAWSUIT**

If you choose to join this lawsuit, you will be bound by the final judgment, whether favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the class. By joining this lawsuit, you designate the named Plaintiffs as your representatives, and to the fullest extent possible, to make decisions on your behalf concerning the case and the method and manner of conducting the case. These decisions and agreements made and entered into will be binding on you if you join this lawsuit.

The named plaintiffs have entered into a contingency fee agreement with plaintiffs' counsel, which means that if there is no recovery, there will be no attorneys' fees or costs chargeable to you. Under the fee agreement, in the event there is a recovery, plaintiffs' counsel will receive a percentage of any settlement obtained or money judgment entered in favor of all members of the class. The Court may also be asked to determine the amount of fees. The fees may be part of a settlement obtained or money judgment entered in favor of plaintiffs, or may be ordered by the Court to be separately paid by Applebee's, or may be a combination of the two.

**VI. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT**

If you choose not to join this lawsuit, you will not be affected by any judgment or settlement rendered in this case on this claim, whether favorable or unfavorable to the class. You will not be entitled to share any amounts recovered by the class as part of this lawsuit. You also will be free to file your own individual lawsuit, subject to any defenses that might be asserted, including but not limited to, the applicable statute of limitations. The statute of limitations continues to run until you either join into this lawsuit or you file your own lawsuit.

**VII. NO RETALIATION PERMITTED**

It is a violation of federal law for Applebee's to terminate your employment, or in any other manner discriminate or retaliate against you for taking part in this case or otherwise exercising your rights under the FLSA. If you believe you have suffered retaliation as a result of your receiving this Notice, your considering whether to join this lawsuit, or the fact you actually did join this lawsuit, you should contact Plaintiffs' counsel immediately.

**VIII. YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you choose to join this suit, your interests will be represented by the named plaintiffs through their attorneys listed below. If you have any questions, comments or require additional information contact any of the following individuals:

Charles A. "Chip" Gentry  
Brian K. Stumpe  
CARSON & COIL, P.C.  
515 East High Street  
P.O. Box 28  
73) 636-2177  
73) 636-7119 (facsimile)  
e-mail: [Chip.G@carsoncoil.com](mailto:Chip.G@carsoncoil.com)

Matthew A. Clement  
Timothy VanRonzelen  
Kari A. Schulte  
COOK, VETTER, DOERHOFF & LANDWEHR, P.C.  
231 Madison  
Jefferson City, Missouri 65101  
(573) 635-7977  
(573) 635-7414 (facsimile)  
e-mail: [mclement@cvd1.net](mailto:mclement@cvd1.net)

You may also visit the website [www.applebeesclassaction.com](http://www.applebeesclassaction.com) or send us e-mail.