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Hawaii High Court OKs Worker Wage Suits Over State Tip Law

By **Abigail Rubenstein**

Law360, New York (July 18, 2013, 8:18 PM ET) -- The Hawaii Supreme Court on Tuesday gave the green light to hotel and restaurant workers to sue under the state's wage law over alleged violations of a state statute that requires service charges on food and beverages to be distributed to employees as tips unless customers are told they won't be.

The issue was certified to the state's highest court in 2011 by a Hawaii federal court in a pair of wage-and-hour class actions against Starwood Hotels & Resorts Worldwide Inc. and Marriott Hotel Services Inc., and the state court concluded Tuesday that the wage laws could be used to enforce the law requiring disclosure if all service charges are not remitted to workers as tips.

In both cases workers sued for unpaid wages under the wage law, alleging that each defendant had imposed service charges and used a portion of the money collected to pay for costs or expenses other than employee tips without clearly disclosing this practice to their customers.

Because the disclosure law ended up being drafted as a consumer protection statute rather than as a change to the Hawaii's wage laws and because violations were deemed in the law to be unfair and deceptive trade practices and unfair methods of competition, the hotels argued that the law could not be enforced through the wage law for claims for unpaid wages.

But the state supreme court found that both the plain text of the law and the legislature's intent supported the plaintiffs' position that employees can sue to enforce the law under Hawaii's wage laws, which allow plaintiffs to recover twice their unpaid wages plus interest in damages and have a six-year statute of limitations.

The high court's decision will impact not only the two cases in which the question was certified but also several other wage class actions lodged by hotel workers that are currently pending in Hawaii, according to Shannon Liss-Riordan of Lichten & Liss-Riordan PC, who represents the plaintiffs in both cases. Liss-Riordan told Law360 that she also represents plaintiffs in three other cases pending against Hawaii hotels over the issue.

"We filed a series of these cases five years ago in 2008, and they got caught up in this question of whether this was enforceable under the wage law," Liss-Riordan explained.

"We are really pleased to see the Hawaii Supreme Court affirm what we believed was the clear language of the legislation that service charges are wages that are protected by the law, and we're very pleased the Supreme Court recognized that employees can enforce their rights under this law through the wage law," she said.

Attorneys for Starwood and Marriott were not immediately available for comment Thursday.

The other pending wage cases target the Four Seasons, The Ritz Carlton and The Grand Wailea, according to Liss-Riordan.

Although all the cases invoke Hawaii state laws, they were brought in federal court under the Class Action Fairness Act.

The plaintiffs in both cases are represented by Harold Lichten and Shannon Liss-Riordan of Lichten & Liss-Riordan PC and Ashley Ikeda and Lori Aquino of Weinberg Roger & Rosenfeld PC.

Starwood is represented by Paul Alston, Anna Elento-Sneed and Maren Calvert of Alston Hunt Floyd & Ing.

Marriott is represented by Barry Marr and Richard Rand of Marr Jones & Wang.

The cases are Rodriguez et al. v. Starwood Hotels & Resorts Worldwide Inc., case number 1:09-cv-00016, and Villon et al. v. Marriott Hotel Services Inc., case number 1:08-cv-00529, in the U.S District Court for the District of Hawaii.

--Editing by Melissa Tinklepaugh.

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