

Wave of tip pooling lawsuits snares more operators

Unclear labor statutes, absence of policies barring improper sharing provoke worker litigation

By Lisa Jennings

LOS ANGELES — A wake-up call for operators nationwide is being sounded by a high-volume wave of lawsuits in California and Massachusetts targeting restaurants for alleged violations of

labor laws governing the pooling and sharing of workers' tips.

With verdicts against operators already assessing millions of dollars in damages, attorneys who specialize in employment law

describe alleged tip pooling infractions as this year's "in vogue" class-action claim in California, in particular, with untold numbers of employers being dragged into court over the issue.

One Southern California law firm alone has filed about 25 lawsuits since March involving allegedly improper workplace policies requiring the sharing of tips. Among the defendants in those

California cases are such national chains as Chili's parent Brinker International, Red Lobster parent Darden Restaurants, California Pizza Kitchen, McCormick & (See **WAVE**, page 8)

Voters mull 6 measures for CPI-indexed wage hikes

OKs in all would bring higher-than-federal rates to 24 states

By Dina Berta

Restaurant operators and local restaurant associations are finding themselves on the frontlines of the minimum-wage battle, which in the recent past has moved more frequently from Capitol Hill to local statehouses and ballot boxes nationwide.

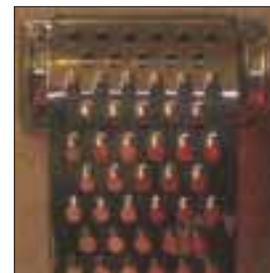
Next month voters in six states will decide in referendums whether to raise the minimum wage above the current federal level of \$5.15 per hour and index

it annually to the rate of inflation. Those states are Arizona, Colorado, Missouri, Montana, Nevada and Ohio. In four of the states, the wage increase would become a permanent part of the state's constitution.

Proponents of a higher minimum wage have gained ground over the years by arguing the issue closer to home. If the November ballot initiatives pass, those six states will join the 18

states and the District of Columbia that now have minimum-wage rates higher than the federal rate, which has remained at \$5.15 per hour for nearly 10 years.

Instead of relying on the lobbying efforts of the National Restaurant Association to defeat a federal proposal, local associations are leading the fights in their own states, partnering with (See **MINIMUM**, page 38)



The group Respect Colorado's Constitution has aired TV ads warning that a wage hike will "grate on you," saying, "It'll wipe you out."



The pizza segment-leading chain is tallying gains from the rapid rollout of its chicken wing brand.

Pizza Hut soars toward 1,000-unit WingStreet brand expansion target

By Carolyn Walkup

DALLAS — Pizza Hut is introducing a new design for its rapidly expanded WingStreet concept that is aimed at attracting dine-in customers to the nearly 800 pizza restaurants that are co-branded with the chicken wing brand.

With WingStreet having grown to that size since opening the first outlet just three years ago, Pizza Hut expects to hit the 1,000-unit mark for its secondary brand by early next year, said Lissen Lawler, the pizza segment leader's director of concept development.

"WingStreet works great with pizza and has taken on a life of its own," she said.

(See **PIZZA HUT**, page 179)

Starbucks boosts expansion outlook 25% amid demographic gains

As food menu rollouts spread nationwide, chain claims broadened customer base

By Sarah E. Lockyer

Venturing beyond its coffee specialties, Starbucks is adding breakfast and lunch items in major markets nationwide.



AGENCE FRANCE PRESSE

SEATTLE — Starbucks Corp. increased its growth target substantially earlier this month, setting a new long-term projection of 40,000 locations worldwide, which is more than triple its current unit count and 10,000 outlets more than the company's previous goal.

Officials, while monitoring the chain's food menu additions nationwide, said the decision to raise the growth outlook was based on new research indicating that Starbucks' customer base is expanding to include patrons with lower incomes and lower education levels. The chain also is extending its reach into the Hispanic market, the study said.

Starbucks currently operates or licenses 12,440 outlets worldwide.

"We did ourselves underestimate the size of the opportunity," Starbucks chairman Howard Schultz told analysts and investors during the company's biennial conference Oct. 5.

Meanwhile, Starbucks' also is focusing on mealtime and convenience opportunities, especially at breakfast, with expansions of warm and cold food offerings and the continued development of restaurants with drive-thrus.

Schultz predicted that in less than five years Starbucks — which currently owns or (See **STARBUCKS**, page 179)

ALSO THIS WEEK:

REGIONAL GROWTH CHAINS:

Burtens Grill puts new polish on casual dining pg. 30

HEALTH AND NUTRITION:

Just because food is 'organic' does not mean it's more healthful pg. 34

CULINARY CURRENTS:

Veracruz offers another unexplored south-of-the-border cuisine pg. 47

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(Continued from page 3)

Schmick's and Hard Rock Cafe.

Starbucks Corp. also has been charged in a class action claiming that shift supervisors in its California coffeehouses improperly received a cut of the tips left for baristas. Estimates of the sums involved in those alleged infractions have ranged into the millions of dollars, and legal experts believe that the case could open a floodgate for similar litigation.

Massachusetts, like California, also has strict laws that have resulted in numerous lawsuits stemming from complaints about tip pooling.

At least one chain, the Morton's steakhouse group, has been targeted by lawsuits in both states and in federal court.

Experts say the trend is likely to spread. A recent lawsuit in Nevada has raised questions about tip pooling practices there, and plaintiffs' attorneys in other states are advertising for participants in possible class actions as well.

"People have largely been unaware of these statutes and their non-compliance; it has been under the radar," said W. David Osborne, an attorney with Carlton, DiSante & Freudenberger in San Diego, a firm that has repre-

Typically, servers, hosts and bussers can safely share in a tip pool, for example, but dishwashers, cooks and janitors cannot because they have no direct contact with customers. Other employees, such as wine stewards, service bartenders and front-room chefs, might fall into a gray area in California, Osborne said.

It's also not clear what constitutes an employer mandate, so operators should adhere to state guidelines whether or not they have a formal policy, he added.

Sharing tips with management is the issue in the class action against Starbucks. A San Diego Superior Court judge in June allowed the case to proceed to trial, denying the Seattle-based coffeehouse giant's motion for dismissal.

Plaintiffs charged that Starbucks required counter workers to share their tips with shift supervisors at the chain's 1,400 units in California.

Starbucks officials declined to comment, except to say that the company has fully complied with California laws and intends to defend itself against the allegations.

Depending on the outcome, Osborne said, that case is likely to become "the blood in the water" that will spur on similar com-



Attorneys advise employers whose staffs pool and share tips to check state statutes and regulations regarding who may participate in such programs.

cooks and hostesses. Managers, however, are never allowed to participate, Ansara said.

"When you wipe away the legal-ese, a server getting a tip generates that tip with the work of several people," Ansara said. "The successful restaurants today operate as a team, and the successful teams operate on sharing."

Elsewhere, however, employers say they don't get involved in tip pooling practices at their restaurants.

Newport Beach, Calif.-based Culinary Adventures Inc., which operates five French 75 brasseries in Southern California and four other casual-dining concepts, has a policy of allowing employees to do whatever they want with tips, said David Wilhelm, the company's president.

There are different schools of thought about encouraging tip pooling, Wilhelm said. "Some say it's good for the house because everyone works together," he said. "But it can also bring everyone down to a certain level," reducing the incentive for servers to work harder for a higher gratuity.

Attorneys in both California and Massachusetts said a hands-off policy like that at Culinary Adventures is wise, so long as it's clear that managerial staff cannot participate in shared tips.

Employers who want to encourage tip pooling should check local statutes to find out who can legally participate, lawyers advise. They add that tip sharing agreements must be fair, and say that it would be permissible for employers to recommend the industry standard of 15 percent to bussers and 5 percent to bartenders, where appropriate.

Perhaps most important, Osborne said, is to put the policy, including all pertinent legal limits, into writing. "Recent litigation has made it clear that restaurants should have written tip-out agreements," he said. ■

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Morton's Restaurant Group has been targeted by lawsuits in California and Massachusetts over allegedly improper tip pooling and sharing policies.

sented employers in such cases. "But employers need to be extremely aware."

In restaurants across the country, it's common practice for servers to share gratuities with others in the service chain, though tip pooling practices vary. Some restaurants have specific policies requiring servers to tip out colleagues. Others leave it up to servers to decide whether and how they want to divvy up their tips.

In California, however, state law specifically prohibits employers from requiring servers to share tips with owners or their "agents"—meaning managers or supervisors—or with other employees who don't customarily receive tips, such as back-of-the-house staff.

plaints, as could the results of lawsuits involving Brinker, Darden and other major chains.

Several of those restaurant companies declined to comment because the litigation was pending.

Most of those cases, however, involve the question of sharing tips with bartenders who may not interact with guests.

If chefs who cook the food are not allowed to participate in tip pools because they don't interact with guests, then neither should bartenders who make the drinks, contends attorney Eric Kingsley, a partner in the Encino, Calif.-based Kingsley & Kingsley, a firm involved in the 25 tip pooling lawsuits in Los Angeles and Orange counties.

Kingsley asserted that the recent wave of lawsuits is largely

a result of employers' increasing pressure on servers to tip out other employees as a way to supplement incomes for nonservice staff and maintain low wages.

"If you can pay a sushi chef minimum wage, but say they can participate in the tip pool, you've significantly reduced your labor costs," Kingsley said. "There's been a creep [of tip outs] into other categories, like hosts and food runners. Suddenly food servers are taking home only half of what they're collecting."

As in California, managers in Massachusetts are prohibited from participating in tip pools. State regulations were clarified in 2004 to ensure that only servers, bussers and bartenders with no managerial duties receive pooled tips.

Service charges also must go only to nonmanagerial staff involved in serving patrons, but employers can charge a "house" or "administrative" fee in which managers can share, so long as customers understand it does not represent a tip.

In July, for example, Hilltop Steak House in Saugus, Mass., was ordered by a jury to pay damages and attorney's fees that could total up to \$3 million in a class-action lawsuit involving four former restaurant employees who claimed they were wrongfully terminated for complaining that a portion of the service charge for a catered event went to managers.

Other cases are pending against the Boston restaurants Grill 23 & Bar, Top of the Hub and The Federalist.

Shannon Liss-Riordan, an attorney with Pyle, Rome, Lichten, Ehrenberg and Liss-Riordan in Boston, said she has filed about 20 tip-pool-related lawsuits against restaurants and hotels in Massachusetts—including two complaints against Morton's, both of which involve a

former policy requiring servers to tip out managers.

One group of plaintiffs alleges that a tip pooling policy at a Morton's unit in Boston violates state law in Massachusetts, and another group claims 71-unit Morton's Restaurant Group has violated federal law by requiring tip-outs to managers. The latter case is in arbitration, Liss-Riordan said.

Morton's officials did not respond to requests for comment.

In Nevada, restaurant operators are paying close attention to a lawsuit filed recently by casino dealers at the Wynn Las Vegas resort after a change in policy required that pooled tips be shared with supervisors.

Michael Tanchek, Nevada's labor commissioner, said state regulations currently don't address tip pooling practices but that it may be something state officials will be forced to address.

However, operators such as Bob Ansara, owner of Ricardo's Mexican Restaurant near the Las Vegas Strip, say they're not worried.

At Ricardo's, for example, servers are expected to pay out 20 percent of their tips to bussers, another 10 percent to bartenders and \$2 per shift to a pool for line

FOR THE RECORD

"Industry sees big dearth of black males in fine dining," Sept. 25, page 51, misstated the year Jefferson Evans graduated from the Culinary Institute of America. He graduated in 1947.

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"Late lunch emerges as a lucrative new daypart," Sept. 25, page 91, misidentified a senior executive of Union Square Hospitality Group. Richard Coraine is USHG's chief operating officer and a partner in the New York-based restaurant operator.

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"Grass-fed movement grows in popularity with chefs nationwide," Oct. 2, page 35, included a comparison of the nutritional value of grass-fed beef versus chicken that was incomplete. According to beef industry sources, the higher amounts of vitamin B12, zinc and iron in grass-fed beef, as compared with skinless chicken breasts, also are true for all kinds of beef.