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Taco Bell Assistant Managers Seek Collective Cert. In OT Suit

By **Max Kutner**

Law360 (September 14, 2020, 8:28 PM EDT) -- A Taco Bell employee has urged a Pennsylvania federal judge to certify a proposed collective action against a franchisee, claiming the company has misclassified certain employees to avoid paying overtime.

The employee argued in a motion Friday that hundreds of assistant managers who worked for Charter Foods Inc. and Charter Central LLC are similar enough for the judge to certify the collective and approve sending notice to its members about the proposed collective action alleging violations of the Fair Labor Standards Act.

"[Assistant managers] were paid a salary (and no overtime), regardless of the number of hours they worked each week or the brand or location of the restaurant in which they worked," a brief in support of the motion said.

The Tennessee-based Charter Foods has restaurants in 12 states and is a franchisee of Yum! Brands restaurant chain Taco Bell.

Charter Foods employee Carrie Gallagher first filed the lawsuit in January and refiled it in March as a proposed collective action. She has worked at three Taco Bell locations, including as an assistant manager, according to the brief.

Between January 2017 and January 2020, Charter Foods classified Gallagher and hundreds of other assistant managers, who often worked 60 to 70 hours a week, as exempt from overtime pay. Because their responsibilities did not fall under any overtime exemptions under federal or state law, Charter Foods illegally misclassified these managers, Gallagher alleged.

Though they were "managers," they were "not responsible for true management functions," her March complaint said. Instead, the assistant managers typically served and rang up customers, prepared food, handled the drive-through, stocked and counted inventory and cleaned up, according to the brief.

They did not handle management responsibilities such as hiring and firing, so their jobs "did not materially differ" from those of nonexempt employees, the complaint said. The company misclassified them simply "to reduce restaurant labor costs."

Nearly 900 assistant managers should be able to join the collective, Gallagher said. These employees across brands and locations are similar enough for certification because they had the same job responsibilities, training, salary and status as exempt.

Gallagher noted that in January, Charter Foods reclassified the assistant managers as nonexempt, paying them hourly. The collective would include employees who worked prior to that change.

Charter Foods is facing at least two more **ongoing lawsuits** from Taco Bell workers regarding overtime pay, both in Tennessee federal court.

Counsel for Gallagher, Charter Foods and Charter Central were not immediately available for

comment.

Spokespeople for Charter Foods, Yum! Brands and Taco Bell also were not immediately available to comment.

Gallagher is represented by Jason Conway of Conway Legal LLC and Daniel C. Levin of Levin Sedran & Berman LLP.

Charter Foods Inc. and Charter Central LLC are represented by Matthew W. McCullough, Jamie R. Schumacher and William S. Speros of MacDonald Illig Jones & Britton LLP.

The case is Gallagher v. Charter Foods Inc., case number 2:20-cv-00049, in the U.S. District Court for the Western District of Pennsylvania.

--Additional reporting by Mike LaSusa. Editing by Jack Karp.

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