

Taco Bell Assistant Managers Nab Collective Cert. In OT Suit

By Irene Spezzamonte

Law360 (June 24, 2021, 6:46 PM EDT) -- Assistant managers who worked for a Taco Bell franchisee and alleged they were not paid overtime were conditionally certified as a collective action Wednesday by a Pennsylvania federal judge.

U.S. District Judge Robert J. Colville found that the assistant managers, who alleged Taco Bell franchisee Charter Foods Inc. and Charter Central LLC misclassified them in order to avoid paying them overtime, have provided enough facts to show that a conditional certification was warranted.

"Opt-in plaintiffs have shown they had near identical experiences with respect to the type of work, job descriptions, training, working over 40 hours per week, and spending the majority of their time performing nonexempt work, while being classified as exempt," Judge Colville said.

According to the ruling, the Tennessee-based Charter Foods operates approximately 309 Yum! Brands franchises in 12 states. In addition to Taco Bell restaurants, others include KFC, Pizza Hut, Long John Silver's and A&W.

The collective group in the current Fair Labor Standards Act suit will include assistant managers at any Charter Foods brand, not just Taco Bell, Judge Colville said.

The decision comes after Carrie Gallagher, who was employed by Charter Foods as an assistant manager at a Taco Bell location in Washington, Pa., **asked the court in September 2020** to grant collective certification to her suit saying that about 900 assistant managers who worked for the chain had faced similar wage violations.

Judge Colville agreed, saying that Gallagher showed assistant managers at Charter Foods "are subject to the same corporate policies and procedures," successfully meeting her burden for conditional certification.

Gallagher alleged Charter Foods misclassified its assistant managers as exempt between January 2017 and January 2020 in order to avoid paying them for overtime.

In her amended complaint filed in Pennsylvania federal court in March 2020, Gallagher alleged that assistant managers regularly worked about 50 hours each week and had responsibilities such as serving customers and handling drive-throughs, which are not the kind of management duties that fall under overtime exemptions under federal or state law.

Judge Colville added that Gallagher provided enough evidence to show other assistant managers' were required to do nonmanagerial work and were misclassified in order to be granted collective certification.

"Plaintiff has made a modest factual showing that [assistant managers] perform the primary duties (roughly 80-90% of their work time) serving customers, preparing food, working the drive-thru, counting inventory, unloading trucks, and cleaning the restaurant," Judge Colville said.

In January 2020 Charter Foods changed its policy and reclassified assistant managers as nonexempt,

paying them hourly.

The collective group will include all assistant managers who were employed by Charter Foods and worked more than 40 hours during one or more workweeks between January 10, 2017, and January 1, 2020, before the reclassification took place, Judge Colville said.

Jason Conway, who represents Gallagher, said he was pleased with Judge Colville's decision.

"We look forward to shortly sending notice of the lawsuit to the assistant managers covered by the court's order and to completing additional, second-stage discovery directed at Charter's improper exempt classification," Conway said in an email to Law360 Thursday.

Lawyers representing Charter Foods declined comment Thursday.

Charter Foods did not immediately return a request for comment Thursday.

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

Charter Foods Inc. is represented by Matthew W. McCullough, Jamie R. Schumacher and William S. Speros of MacDonald, Illig, Jones and 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 Max Kutner. Editing by Vincent Sherry.