





Advocacy group can't sue over low pay for nonwhite, female Darden workers

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By Daniel Wiessner



Tables are set inside a cafe during preparations for the reopening of restaurants and bars in Paris as part of an easing of the country's lockdown restrictions amid the coronavirus disease (COVID-19) outbreak in France, May 18, 2021. REUTERS/Benoit Tessier

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- Tipped workers' group not Darden 'employees' under anti-bias law
- Group also failed to allege it was injured by pay practices
- Darden accused of discriminating against female, nonwhite workers

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(Reuters) - A federal judge in San Francisco has ruled that a nonprofit that advocates for better minimum wages for tipped workers lacks standing to pursue claims that Darden Restaurants Inc discriminates against women and nonwhite workers by paying them the lowest hourly wages allowed by law.

U.S. District Judge Edward Chen on Tuesday dismissed One Fair Wage's April lawsuit, saying the group cannot sue Darden under Title VII of the Civil Rights Act of 1964 because it is not an employee of the company, which is the world's largest full-service restaurant operator.

Chen also agreed with Florida-based Darden that OFW lacked standing as an organization because it had not alleged that the company's pay practices directly impaired its ability to operate or function.

OFW, represented by Gerstein Harrow and the National Legal Advocacy Network, claimed it spends tens of thousands of dollars on salaries, consultant payments, office supplies and other costs each year providing assistance to Darden workers as a result of the company's pay policies.

Darden, which operates eight restaurant chains including The Olive Garden, LongHorn Steakhouse, and the Capital Grille, did not immediately respond to a request for comment. Neither did OFW.

The lower minimum wage owed to tipped workers has been the focus of intense scrutiny in recent years. Groups including OFW and Restaurant Opportunities Center have successfully pushed several states to eliminate the tipped minimum.

But the federal Fair Labor Standards Act only requires employers to pay tipped workers \$2.13 an hour and to make up the difference when their wages including tips are less than \$7.25 an hour, which is the normal minimum wage. Some states have a higher tipped minimum wage.

OFW in its complaint against Darden said regardless of where tipped workers are located, they are consistently exposed to pervasive sexual harassment and race discrimination. And studies have shown that workers of color are tipped less than their white coworkers, according to the complaint.

The group said Darden has a policy requiring that tipped workers be paid the lowest hourly wage allowed by law, and does not allow managers to exercise discretion over wages. That, in turn, means managers have an incentive to ignore and even encourage sexual harassment and race-based disparities in tipping, OFW said.

Darden could take steps to mitigate those effects, such as by pooling tips or charging customers a standard service fee, but does not, the group said.

OFW accused Darden of sex and race discrimination in violation of Title VII.

But Chen on Tuesday said OFW's devotion of resources to efforts involving Darden lies squarely within the group's mission, and does not amount to an injury.

And Title VII does not provide a cause of action to non-employees, even when an employer's alleged discrimination derivatively affects them, he said.

"This is particularly pertinent here, as there may well be employees who object to the changes sought by OFW to eliminate unmediated tipping," Chen wrote.

The case is *One Fair Wage Inc v. Darden Restaurants Inc*, U.S. District Court for the Northern District of California, No. 4:21-cv-2695.

For One Fair Wage: Jason Harrow of Gerstein Harrow

For Darden: Christopher Braham of McDermott Will & Emery

Read more:

[Darden accused of sex, race bias for relying on tips to meet minimum wage obligations](#)

[Darden perpetuates bias, harassment by paying tipped minimum wage- complaint](#)

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