

## Workers Serve NYC Pizzeria With Class Action Suit

More than 100 current and former employees of a hip Manhattan pizzeria have been certified as a class in their lawsuit alleging unpaid wages and improper record keeping.

Marcel Mendez, the named plaintiff in the class action, was a delivery person for Adrienne's Pizza Bar from 2006 through 2011. He alleges that from the time of his employment through 2010, he worked long hours at a fixed salary of between \$325.50 and \$375.50, often working up to 72 hours per week.

Mendez says he and other employees were paid below minimum wage and were denied overtime pay and spread of hour premiums. Under New York labor law, employees who work split shifts are eligible for the spread of hour premium — an additional hour of pay at minimum wage — if 10 or more hours pass between the start of the first shift and the end of the last shift.

The suit also alleges that the pizzeria had no system for tracking the hours of salaried employees prior to 2010, when it transitioned to an hourly pay system. Even after hourly pay was instituted, Mendez says that the spread of hour premium violations continued.

The federal judge who certified the class dismissed the pizzeria owners' argument that non-delivery workers should be excluded because of their different job functions, noting that the complaints of unpaid wages had nothing to do with the individual duties of the restaurant's employees. Judge Denise L. Cote also rejected the owners' contention that dining room employees should be excluded because they were paid properly. Since the pizzeria didn't use an hourly pay system before 2010, Judge Cote said "a common question therefore exists as to whether [Adrienne's Pizza Bar's] procedures for keeping track of the actual hours worked by its employees were reliable."

### Could it Happen to You?

Even though Mendez was allegedly being denied minimum wage and overtime pay, he continued to work for the pizzeria for five years before taking action.

When you discover or suspect that your employer isn't paying you what you're owed, it can be a stressful dilemma. Do you raise the issue with your boss? Do you consult an attorney? Do you report the violation to the Department of Labor? None of the above?

"You've got to ask yourself: how are things going at that job?" said Graig F. Zappia, an employment law attorney with Tully Rinckey. "If you like your job a lot and your damages are potentially low, pursuing a case becomes more of a business decision. Yes, there are some anti-retaliation statutes that can protect you, but sometimes people make a calculated decision to not rock the boat."

In other cases, employees feel pressure to allow violations not because they have little to gain, but because they have so much to lose.

“In these economic times, people are often completely dependent on their jobs to put bread on the table for their family, which doesn’t always leave them a lot of leverage,” Zappia said.

Whether or not it’s wise to take your concerns directly to your employer may come down to the nature of your relationship. If your boss is a reasonable person or there’s a chance there has been an honest mistake, the problem can possibly be resolved with a conversation. But if that doesn’t work, seeking the advice of an employment attorney is the next logical step.

Though it may be satisfying to simply forego a lawsuit and report the violation to the authorities, you should think twice if you’re potentially owed back pay or other recompense from your employer.

“Once you involve the Department of Labor or any government agency, you lose several of the first negotiation phases that you would have access to if you consulted an attorney first,” said Zappia. “There’s potentially no going back if you take your complaint straight to the labor authorities. If you talk to counsel first, you have an opportunity to resolve the problem in a way that works for everyone involved.”