

# Putative Class Members Not Lovin' It – Court Denies Conditional Certification of Supersized McDonald's FLSA Class of More Than 1,000

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McDonald's, the fast food giant known for supersizing its orders, avoided conditional certification of an FLSA collective action this week based on the "very large" size of the putative class. The Eastern District of Michigan **denied plaintiffs' motion for conditional collective action certification** in two related cases based on allegations that McDonald's and several franchisees failed to pay workers minimum wage.

The plaintiffs argued that their claims were appropriate for class treatment because all of the workers were subject to the same corporate policy or practice pursuant to which McDonald's employees were allegedly instructed to delay clocking in at the beginning of their shifts and to take extended mid-shift breaks to ensure the restaurant did not exceed an overall labor costs target. They also claimed that McDonald's unlawfully deducted the costs of uniform items from workers who were paid at or near minimum wage, resulting in pay that was below minimum wage. McDonald's argued that there was no common unlawful policy or practice and that the case required individualized inquiries based on each employee's position, location, etc.

The court denied the motions despite the relatively low bar for conditional certification, holding that the putative class, which ranged from 1,000 to 3,000 members, was too large to warrant conditional certification. Interestingly, the court relied on the fact that it was "almost certain" that at the second stage of the two-stage FLSA certification process the court would find that the plaintiffs were not similarly situated. In particular, the court noted that the employees had varying pay rates, hours worked and deduction methodologies applied to their pay and that they worked for different managers at different restaurants where wait times were "extremely inconsistent."

McDonald's is not off the hot seat, yet, though. Workers in California and New York have filed lawsuits against the company asserting that their employer illegally underpaid them by erasing hours from their timecards, not paying overtime and ordering them to work off the clock.

## Authors