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## **McOvertime suit goes forward**

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A federal judge allowed a group of McDonald's employees to go ahead with their lawsuit to collect McOvertime.

On Tuesday, U.S. District Judge Charles Shaw said the plaintiffs could continue with their class action lawsuit against the fast-food giant, although he pared down some of their claims.

"We have an uphill battle, but we feel pretty good about it," said Jon Tostrud, a Los Angeles lawyer representing the would-be class.

The lawsuit alleges employees at about 30 McDonald's restaurants in Missouri were not compensated for all the hours they worked. The employees alleged they were often denied meals and forced to work through their breaks. They also allege the electronic time records were manipulated to deduct time for breaks the employees didn't take.

A McDonald's spokesman did not return a phone call by press time.

The plaintiffs allege violations of the Missouri Minimum Wage Law, among other counts, against current and former hourly employees who have worked at the McDonald's restaurants since March 1, 2006.

McDonald's argued the plaintiffs don't have constitutional standing to sue on behalf of employees at any restaurant other than the one they worked at. The plaintiffs — Amy and Michael Doyel, Alex Prodes and Daniel Pryor — have all worked at the restaurant in Oakville in south St. Louis County.

Shaw wasn't ready to deny class certification at this point in the lawsuit. The plaintiffs' complaint, as amended in October, "clearly establishes they have constitutional standing to bring their claims," he said.

The judge also refused to dismiss the plaintiffs' class allegations. He expressed some doubt about the ultimate outcome but wrote "at this stage in the proceeding these doubts must be resolved in favor of plaintiffs."

"We think with respect to these 30 stores that we will be able to demonstrate sufficient commonality in the violations at those stores to persuade the court that this case is a good class action, that it should be certified as a collective and class action," Tostrud said.

Shaw's order, however, barred the plaintiffs' from recovering damages for Missouri Minimum Wage Law violations that arose prior to Jan. 1, 2007, because until then the state law didn't apply to McDonald's and other companies whose employees were covered by the federal Fair Labor Standards Act.

The plaintiffs argued that the state law's exemption of employees covered by the federal law shouldn't apply to them. They argued that they worked through meals and breaks, and worked off-the-clock, so they didn't receive minimum wage.

Shaw rejected that argument.

"If the Court were to adopt plaintiffs' interpretation, an employee would be exempt from the MMWL only if his employer complied with the FLSA's minimum wage requirement," he wrote. "Because the provisions of the MMWL and the FLSA were substantively identical before January 1, 2007, an employee would be exempt from the MMWL only if his employer complied with the MMWL. Based on the entire text and purpose of [the] MMWL, the exemption meant to protect individuals by the MMWL if they were not protected by the FLSA."

Shaw also dismissed the plaintiffs' claims for injunctive or declaratory relief under the state law as well as their claims that McDonald's violated Missouri's record-keeping statute.

The record-keeping claim "would have been a bonus claim," Ryan Stephan, Tostrud's co-counsel, said Wednesday. Stephan, a lawyer at Stephan Zouras in Chicago, was interviewed in a conference call with Tostrud.

"That doesn't mean we can't pursue factually the existence of records," added Tostrud, of counsel to the Washington, D.C., firm Cuneo, Gilbert & DeLuca. "If in fact we find records have been altered or missing, we'll use that to support our claim."

The plaintiffs, however, may pursue state law claims for unjust enrichment, quantum meruit and breach of an implied contract, Shaw said.

McDonald's argued that the FLSA pre-empts these state law claims. But the judge said the claims don't depend upon enforcement of the FLSA and aren't pre-empted by the federal law. Shaw also noted that the plaintiffs said they intend to plead these claims in the alternative to their state law claims.

The lawsuit includes an individual claim by Michael Doyel for retaliation. Doyel had been training for a salaried manager position, but after he filed the lawsuit on Feb. 29, 2008, the restaurant denied him the opportunity to complete the required training course, the lawsuit alleges.

The case is Doyel et al. v. McDonald's Corp., 4:08-cv-1198, and case filings may be accessed through the court's Web site, [www.moed.uscourts.gov](http://www.moed.uscourts.gov).