

Aldi Managers Get Collective Cert. In Classification Suit

By **Shayna Posses**

Law360, New York (February 23, 2017, 4:13 PM EST) -- A New York magistrate judge on Wednesday conditionally certified a collective action brought by Aldi Inc. store managers alleging the grocery chain misclassified them to skirt overtime requirements, holding that the workers met their burden to show they were similarly situated victims of a common policy that violated the Fair Labor Standards Act.

U.S. Magistrate Judge Andrew T. Baxter held that Anthony Griffin, Mark McIndoo and Suzanne DeTomaso made the required showing at this stage to warrant conditional certification of their collective action under the FLSA, which contends they often worked far beyond their scheduled 50-hour workweek without overtime pay, doing tasks that could have been performed by nonexempt employees.

"The court concludes that plaintiffs have made the required modest factual showing that they and other potential opt-in plaintiffs are similarly situated and together were victims of a common policy or plan that violated the FLSA," the judge said. "Accordingly, the court will grant plaintiffs' motion for conditional certification and authorize notification of other present and former Aldi store managers from March 29, 2013, through the present."

The former upstate New York store managers filed suit in March, bringing their case as a nationwide collective action under the FLSA and a statewide class action for violations of the New York Labor Law, according to court filings.

The complaint alleges that Aldi — which operates more than 1,400 stores in 32 states — helps maintain its low prices by cutting labor costs, with each store typically staffed by one or two cashiers and either a store manager, shift manager or manager in training. Only the store managers are salaried employees, and they often work more than 50 hours a week without overtime pay, they claim.

Part of the problem is that their job security depends on meeting their so-called productivity figure, which is the store sales divided by the budget of hours, the complaint alleges. The managers have little control over sales, so their only way to affect the figure is to work more in the place of nonexempt employees, as the unpaid time isn't counted toward the calculation, according to the complaint.

Ultimately, store managers spend 90 percent of their time doing the same duties assigned to nonexempt employees, but, since they are classified as exempt, they don't receive overtime pay, the complaint alleges. Meanwhile, they are given little managerial discretion, lacking the final authority to hire, fire, promote, discipline or even access the personnel files of their employees, according to the suit.

On Dec. 14, U.S. District Judge Lawrence E. Kahn granted Aldi's bid to dismiss the managers' unjust enrichment claim on behalf of the statewide class, saying it duplicates their FLSA allegation and is therefore preempted.

Two days later, the managers asked for conditional certification. Just prior, five former store

managers for Aldi locations in other states had filed FLSA consent forms to join as opt-in plaintiffs, according to court filings.

Judge Baxter granted the certification request Wednesday, finding first that the managers sufficiently alleged a common plan that violated the FLSA, namely that Aldi's emphasis on controlling labor costs and the pressure it puts on store managers to meet the productivity figure led to them working far beyond their scheduled 50 hours, doing manual labor that could otherwise be performed by nonexempt workers.

The plaintiffs' depositions confirmed how this alleged plan often resulted in managers working up to 60 to 70 hours a week without earning overtime pay, the judge noted.

The depositions provided by the named plaintiffs, as well as the declarations of the five opt-in plaintiffs, also corroborate allegations regarding the scope and mix of duties they were required to perform, the judge determined.

Each said they spent between 75 and 90 percent of their workday performing the duties of cashiers and other nonexempt employees, according to the opinion. Even the current store managers for whom Aldi submitted declarations acknowledged that they frequently helped nonexempt employees with manual tasks, Judge Baxter held.

There is considerable authority from the circuit that this sort of evidence is enough to support the modest showing required to justify conditional certification and notice to similarly situated store managers across the country, the judge said.

Plus, Judge Baxter added, the plaintiffs point to two prior actions brought by Aldi store managers in which an FLSA collective was approved by other courts. These conditional certifications aren't binding in this court, but they certainly support the plaintiffs' request, he said.

In granting the request, the judge noted that his finding doesn't resolve whether, after discovery ends, the managers "can sustain their burden of establishing that their counterparts across the country are, in fact, similarly situated under the more stringent standards that would apply to a decertification motion."

Representatives for the parties didn't immediately return requests for comment Thursday.

The store managers are represented by Adam R. Gonnelli of the Sultzer Law Group PC, Innessa S. Melamed of Faruqi & Faruqi LLP and Frank S. Gattuso of O'Hara O'Connell & Ciotoli.

Aldi is represented by Noah A. Finkel, Cheryl A. Luce, Howard M. Wexler, Louisa J. Johnson and Lucas E. Deloach of Seyfarth Shaw LLP.

The case is Griffin et al. v. Aldi Inc., case number 5:16-cv-00354, in the U.S. District Court for the Northern District of New York.

--Editing by Aaron Pelc.