

Don't Disregard Your Employees' Rights, Even If They're Strippers

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Douglas M. Oldham
Of Counsel

On Nov. 14, a New York federal judge granted summary judgment and awarded \$10,866,035.00 to a class of exotic dancers from Rick's Cabaret after finding that the gentlemen's club had violated the Fair Labor Standards Act and the New York Labor Law. The court previously found that Rick's Cabaret had impermissibly classified its dancers as independent contractors instead of employees to skirt minimum wage laws. In fact, the plaintiffs should have been classified as employees based on the control Rick's Cabaret exercised over them. The club set requirements for when the dancers could work, imposed a dress code and strict standard for appearance, and told them how to dance and how to conduct themselves with customers. Moreover, the court found that the dancers were employees because they were an integral part of Rick's Cabaret's business – despite the club's insistence that customers came for the other amenities such as the food and drink, the court was not convinced. Because the dancers were employees, they were entitled to coverage under state and federal minimum wage laws. The court found that Rick's Cabaret paid its dancers below the minimum wage once fines and fees were deducted from their pay. Much of this dispute focused on performance fees for private dances. Customers who paid dancers for a private dance could pay the performance fee with cash or credit. Those who paid with cash paid the dancers \$24.00, which they kept in its entirety. However, those who paid with credit gave their credit cards to Rick's Cabaret, which charged \$24.00 but only reimbursed \$18.00 of that to the dancers. The court found that the New York Labor Law did not treat this performance fee either as a wage or as a gratuity that offset Rick's Cabaret's statutory wage obligations. Under New York law, an employer may not demand or accept any part of an employee's gratuity. Because Rick's Cabaret charged a fee on the reimbursement it paid to its dancers, the court ruled that it could not argue after the fact that the performance fee was a gratuity that should offset wage obligations. While the case will continue to trial on unresolved issues, the court's ruling on summary judgment and the eight-figure award will serve as a sober reminder to employers to mind the rights of their employees, even those employees who are frequently not granted a great deal of respect. The case is *Hart v. Rick's Cabaret International, Inc.*, 1:09-cv-03043 in the U.S. Court for the Southern District of New York.

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