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That's A Wrap: No Workplace Class Action For California Chipotle Workers

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The U.S. District Court for the Northern District of California recently denied certification of a potential workplace class action, explaining that "[i]t is not enough at the class certification stage, however, to simply assert that there were company-wide policies," and holding that the plaintiff employees had not proven that the alleged policies "existed on a company-wide basis."

In *Guzman v. Chipotle Mexican Grill, Inc.*, the plaintiffs brought the class action suit alleging that their employer systematically discriminated against employees of "Hispanic race and/or Mexican national origin," and making claims under the California Fair Housing and Employment Act (FEHA). The plaintiffs sought certification of a Rule 23 class made up of approximately 43,000 individuals, consisting of California hourly employees "who are Hispanic and/or of Mexican national origin." The plaintiff employees alleged a variety of claims for discrimination, retaliation and harassment on the basis of two alleged policies of the defendant employer:

1. **English-Only Policy:** the plaintiffs alleged an unwritten policy prohibiting employees from speaking Spanish at work
2. **Promotion Policy:** the plaintiffs alleged an unwritten policy requiring a subjective level of English proficiency before any promotion to a management position

The plaintiff employees alleged that these unwritten policies applied at all of

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the approximately 400 stores in California. In addition to a variety of evidentiary objections, the defendant employer argued, in part, that to the extent the policies even existed at all, the claims by the employees would "require individualized inquiries into such policies, including the subjective decision-making by Defendants' supervisors who had discretion to implement the challenged policies, to the extent they existed, at individual restaurants."

As the court explained, in considering class certification, the court cannot "accept at face value Plaintiffs' theory of the case." Rather, the court must engage in a "rigorous analysis" to determine whether Rule 23 is satisfied, even to the extent that analysis overlaps with the merits of the dispute. The court explained that the plaintiff employee's evidence "tendered here in support, however, actually rebuts the inference that Defendants uniformly imposed such policies in their California restaurants."

With regard to the alleged English-only policy, examining the testimony of 12 declarants, the court explained that "the declarants' differing experiences belie Plaintiffs' asserted basis for class-wide adjudication." For example, half of the declarants did not experience the alleged English-only policy, and some of those who claimed they did were in fact permitted to speak Spanish among themselves. The court concluded that there was no evidence of the alleged English-only policy applying to the entire class.

With regard to the alleged promotion policy, the plaintiffs and the declarants "experienced disparate policies and requirements for promotion," including one declarant who did not assert that they experienced the alleged policy at all. To the extent there was evidence of similar experiences, the record demonstrated that those employees "worked in the same store and had the same general manager." The court concluded that the record demonstrated only that "employees in four of the 400 California stores were told at different times while working in Defendants' restaurants that in order to be promoted they needed to improve their English proficiency." The court concluded that the plaintiff employee's evidence "does not suggest that there was a uniform policy that applied to all class members."

Ultimately, because there were not "common questions of law or fact that could be resolved efficiently in a single proceeding," the court denied class certification.

The *Guzman* decision serves as a useful reminder for employers defending workplace class actions that it is not enough for class action plaintiffs to simply allege the existence of a uniform policy, especially in light of *Dukes*. Rather, at the class certification stage, the court's "rigorous analysis" demands "significant proof" of the alleged policies. This is particularly true when the alleged objectionable policies are "unwritten."