

## Press Release

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# Lawsuit alleges Frederick's White Rabbit Gastropub violated federal labor laws, retaliated against employees who spoke up

On August 12, 2022, the Employment Law Center of Maryland filed Case No. 1:22-cv-02019-JRR in the federal District Court for the District of Maryland. The case, on behalf of Frederick server and bartender Carrie Pancurak, is against McFly's, Inc., better known by its trade name: White Rabbit Gastropub.

Pancurak alleges that she organized the "front of house" staff of White Rabbit Gastropub, a craft beer house and gastropub located in downtown Frederick, MD, to write a letter to the establishment's owners asking them to "abide by the minimum wage laws for tipped employees set forth by the Fair Labor Standards Act."<sup>1</sup> At issue was White Rabbit's practice of regularly requiring tipped employees to spend significant amounts of time (allegedly, hours) doing non-tip-producing work, such as cleaning ice machines or organizing dry goods. Pancurak told White Rabbit's management that this practice ran afoul of the U.S. Department of Labor's "[80/20 rule](#)," which regulates the amount of time tipped employees can be required to perform non-tip-producing work. For service employees like Pancurak, who made just \$3.63 per hour at White Rabbit, focusing on tip-producing work is necessary to earning a livable wage.

On July 8, 2022, Pancurak met with White Rabbit's general manager to discuss her concerns that White Rabbit wasn't complying with federal labor laws. But instead of addressing Pancurak's concerns, White Rabbit's management immediately sending Pancurak home, removed her from the gastropub's shift scheduling app, and cut her regularly scheduled shifts down from five a week to just one—a blatant act of retaliation prohibited by the Fair Labor Standards Act, which reads:

it shall be unlawful for any person... to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter...

29 U.S.C. § 215(a)(3)

But White Rabbit's retaliation didn't end with Pancurak; she alleges that another employee – Kevin Golden – was similarly retaliated against (*i.e.*, his shifts cut down to just one per week) when he also told the gastropub's management that they were violating federal labor laws, just days after Pancurak was sent home.

In addition to White Rabbit (McFly's, Inc.), the lawsuit names two individual defendants: owner Kenneth MacFawn and general manager Larry Fellows, each of whom allegedly had a hand in retaliating against Pancurak and Golden. The FLSA is one of a handful of federal employment laws that imposes individual liability on corporate officers and supervisors for violations—meaning MacFawn and Fellows may be held personally responsible for retaliating against Pancurak.

MacFawn's reaction to learning of Pancurak's case certainly hasn't been that of a business owner concerned with following the law, rather, he has reached out directly to Pancurak's husband, calling him a "coward" for allowing his wife "consult with a government agency behind [White Rabbit's] back."

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<sup>1</sup> A near-complete copy of the letter is quoted in Pancurak's federal Complaint.

Per the Employment Law Center of Maryland's Managing Attorney Joseph W. Gibson, "White Rabbit's owner calls Ms. Pancurak's act of standing up for her rights 'cowardice.' I call it federally protected activity under the Fair Labor Standards Act. That difference of opinion is why White Rabbit is now facing a federal retaliation case."

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