ROARK CAPITAL'S BOOMING WAGE THEFT RISK

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JULY 2021

Private Equity Stakeholder Project

Key Points

- In December 2020, Roark Capital, an Atlanta-based private equity firm, acquired Dunkin' Brands, which has 330,000 people working at its Dunkin' Donuts and Baskin Robbins stores.[1] This pushed the total number of people working at Roark-owned companies or their franchisees to close to 1 million.

- Roark Capital specializes in buying and running franchise businesses, especially within the food and restaurant industry, such as Arby's, Jimmy John's, Hardees, Buffalo Wild Wings, and Sonic Drive-In.[2]

- Food service workers are more likely than workers in any other industry to be victims of wage theft – when companies fail to pay workers the full wages they are legally entitled to.[3]

- Since 2010, there have been more than 450 investigations by the US Department of Labor, resulting in Dunkin' Donuts stores being ordered to pay over $1.5 million in back wages to over 3,600 of its workers for minimum wage and/or overtime violations.[4]

- Other Roark Capital-owned companies – Jimmy John's, Sonic Drive-In, Jamba Juice, Buffalo Wild Wings, Arby's, Hardee's, and Carl's Jr – have also paid out millions of dollars for minimum wage and overtime violations.

- Dunkin' Donuts and some of the other brands have been recent acquisitions by Roark Capital, and the Department of Labor citations happened before being acquired by Roark. However, many of the class action lawsuits discussed in this report allege wage theft that happened after the company was acquired by Roark Capital. In addition, the frequency of violations at Roark Capital-owned brands raises the question of how Roark will handle this issue going forward at Dunkin' Donuts and its other brands.

- Dunkin Donuts stores and other Roark Capital-owned brands could be a liability for Roark, especially considering a federal judge's ruling last year that expanded the circumstances of when a parent corporation is considered a joint employer and liable for its franchisees' actions. This means that Roark Capital's portfolio companies could be held responsible for wage and hour violations by their franchisees.

- Food service jobs are the lowest paid occupational group in the U.S.[5] Many of the jobs at Dunkin' Donuts and the other Roark Capital-owned brands pay between $10/hr. - $12/hr. A recent GAO report found that employees at some Roark Capital owned brands are among the most frequent recipients of food stamps (i.e., SNAP) in some states.

- While many other large restaurant chains, like McDonalds, Domino's, and Denny's have dropped their opposition to a $15 minimum wage, Roark Capital's Inspire Brands recently bragged about its role in helping to kill the federal Raise the Wage Act and is deeply involved with the National Restaurant Association, which has been one of the major opponents of raising the federal minimum wage.

- The low pay and poor working conditions at fast-food restaurants have resulted in labor shortages, and as a result, restaurants have had to cut store hours or close their dining spaces, posing a large operational risk for Roark Capital since so many of its investments are in the fast-food industry.

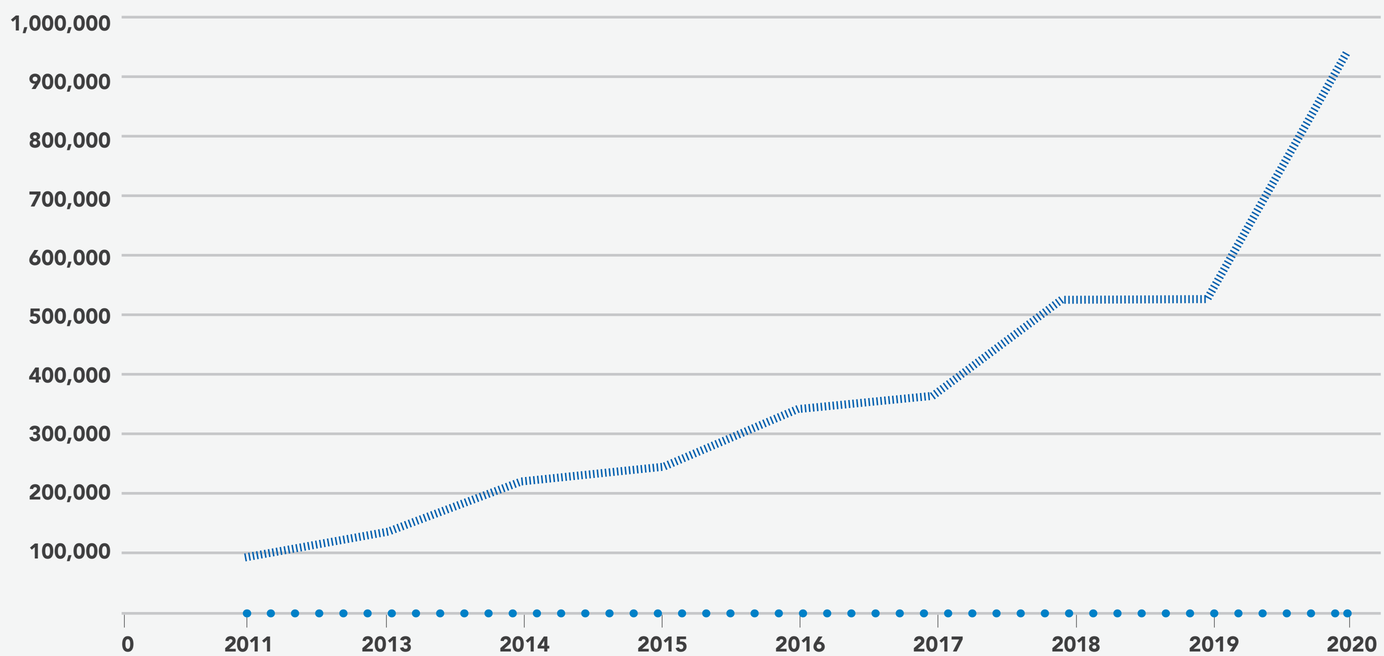
ROARK
CAPITAL GROUP

Roark Capital

Roark Capital was founded in 2001 by Neal Aronson, who named the firm after Howard Roark from the Ayn Rand novel *The Fountainhead.*[6] The firm has $25 billion in assets under management and focuses on acquiring franchised businesses in the retail, restaurants, and consumer services sectors.

In December 2020, Roark Capital acquired Dunkin' Brands, which has 330,000 people working at its Dunkin' Donuts and Baskin Robbins stores.[7] This, along with other acquisitions last year, pushed the total number of people working at Roark-owned companies or their franchisees to close to 1 million.

ROARK CAPITAL - TOTAL NUMBER OF EMPLOYEES



The majority of these employees work for a fast-food company, and the largest segment within Roark Capital's fast-food empire is Inspire Brands, which is now the second largest food system in the U.S.[8] Roark launched Inspire Brands in 2018, following its acquisition of Buffalo Wild Wings.[9]

ROARK CAPITAL'S FAST-FOOD EMPIRE

COMPANY	YEAR ACQUIRED	ROARK CAPITAL DIVISION
Dunkin' Brands	2020	Inspire Brands
Sonic Drive-In	2018	
Buffalo Wild Wings	2018	
Rusty Taco	2018	
Jimmy John's	2016	
Arby's	2011	
Jamba Juice	2018	Focus Brands
Auntie Anne's	2010	
Moe's Southwest Grill	2007	
Schlotzsky's	2006	
McAlister's Deli	2005	
Cinnabon	2004	
Seattle's Best Coffee	2004	
Carvel	2001	
Hardee's	2013	CKE Restaurants
Carl's Jr	2013	
Nothing Bundt Cakes	2021	N/A
Culvers	2017	
Jim 'N Nick's BBQ	2017	
Miller Ale House	2013	

Wage Theft

Food service workers are more likely than workers in any other industry to be victims of wage theft – when companies fail to pay workers the full wages they are legally entitled to. [10]

Dunkin' Donuts and other Roark Capital-owned brands are no exception to this.

Dunkin' Donuts

Since 2010, there have been more than 450 investigations by the US Department of Labor (DOL) Wage and Hour Division that have resulted in Dunkin' Donuts stores being ordered to pay over $1.5 million in back wages to over 3,600 of its workers for minimum wage and/or overtime violations.[11]

These are not isolated cases limited to just a few stores. The DOL found violations in 31 of the 39 states in which there are Dunkin Donuts stores.[12]

In addition to the violations found by the Department of Labor, there have been private lawsuits, such as the class action lawsuit that was settled in 2017 by the owner of 18 Chicago-area Dunkin Donuts stores.[13] The lawsuit alleged that workers had not been paid for all overtime and minimum wages they were due, and that the franchise owner had instructed managers to change the recorded clock-in and clock-out times in the computer databases to make it appear that the employees worked fewer hours than they actually did.[14]

This has been an ongoing issue at Dunkin's Donuts. A CNN analysis in 2014 found that Dunkin' Donuts had

the third most wage and hour violations in the U.S, after Subway and McDonalds.[15]

Sonic Drive-Ins

Roark Capital acquired Sonic Drive-Ins in 2018.[16]

Since 2010, the US Department of Labor (DOL) Wage and Hour Division has ordered Sonic Drive-In restaurants to pay over $960,000 in back wages to over 6,800 of their workers for minimum wage and/or overtime violations, as well as more than $232,000 in civil money penalties.[17]

The DOL has ordered Sonic Drive-In restaurants to pay almost $100,000 in back wages and civil money penalties

Since 2010, there have been more than 450 investigations by the US Department of Labor, resulting in Dunkin' Donuts stores being ordered to pay over $1.5 million in back wages to over 3,600 of its workers for minimum wage and/or overtime violations.

since Roark has owned Sonic. For example, in February 2021, a Sonic franchisee in Baltimore, Maryland was required to pay over $45,000 in back wages to 65 Sonic employees.[18]

In August 2020, a class action lawsuit was filed against 30 Sonic Drive-Ins in Tennessee, Mississippi, and Arkansas for alleged minimum wage and overtime pay violations between August 2017 and August 2020.[19]

- According to the complaint, the owners of the Sonic Drive-ins "induced, required, forced, expected, encouraged, and/or suffered or permitted" the Sonic workers to perform job duties while clocked off their time keeping system without being compensated at the applicable overtime and/or minimum wage rate of pay.

- Specifically, the complaint alleges that Sonic managers routinely had workers clock-out at the end of their shift and then "required and forced them to continue working for thirty (30) minutes or more while 'clocked-out', for which they were not paid."[21]

- According to the complaint, "the net effect" of the Sonic Drive-Ins' "common plan, policy and practice of depriving [workers] the required overtime compensation for all compensable hours of work is that they have unjustly enriched themselves and enjoyed ill-gained profits at the expense of Plaintiff and other similarly situated hourly-paid employees."[22]

The Sonic Drive-Ins owner denied all the allegations and denied that they had engaged in any wrongful conduct.

The case is ongoing as of July 11, 2021.

> **A class action lawsuit filed in 2020 alleges that Sonic managers routinely had workers clock out at the end of their shift and then "required and forced them to continue working for thirty (30) minutes or more while 'clocked-out,' for which they were not paid."**

Jimmy John’s

Since 2010, the US Department of Labor (DOL) Wage and Hour Division has ordered Jimmy John’s stores to pay almost $1.6 million in back wages to around 6,000 of their workers for minimum wage and/or overtime violations.[23] The majority of these violations occurred before Roark acquired the company in September 2016.

A Jimmy John’s franchise owner in Virginia settled a class action lawsuit in 2019 that alleged minimum wage violations occurring through 2019, well after Roark Capital’s 2016 acquisition of the company. The lawsuit alleged that Jimmy John’s paid workers below minimum wage as tipped workers, even when they were doing non-tipped work.[24]

In February 2021, Jimmy John’s agreed to pay $1.8 million to settle charges from workers in Illinois, Indiana, and Ohio, who said they were wrongly classified as overtime-exempt assistant managers, even though they spent most of their time performing non-exempt tasks like making sandwiches and operating the cash register.[25]

- According to the complaint, which was originally filed in 2014, before Roark Capital bought the company, the assistant mangers were regularly scheduled to work 50 hours a week but were routinely expected to work more than that, often 65-70 hours per week. The assistant mangers were paid $500 per week, regardless of how many hours they worked.[26]

- In addition, the lawsuit alleged that the assistant managers were required to use their own cars to deliver sandwiches but were not reimbursed for gas or other costs related to driving and received no reimbursements based on the miles on they drove.[27]

Other Brands

In 2013, Roark Capital acquired CKE Restaurants, which owns, operates, and franchises Hardee’s and Carl’s Jr. restaurants.[28]

- A class action lawsuit filed in February 2021 alleges that over the previous year, a **Hardees** franchisee in

Georgia “chronically understaffed” its restaurants while continuing to remain open twenty-four hours a day. As a result of this, the Hardees owner allegedly required employees to travel from one restaurant to another to cover staffing shortages but did not pay them for this travel time or the time spent working at other restaurant locations and did not pay them the overtime wages they were owed. In addition, according to the complaint, employees were forced to continue to work after their shift ended when other employees did not show up on time. The lead plaintiff alleges that she has had to work for 36 hours straight on multiple occasions. The case was settled in May 2021 with the franchisee agreeing to pay back wages, liquidated damages, and attorney’s fees.[29]

- In 2017, the city of Los Angeles ordered **Carl’s Jr.** to pay $1.45 million for alleged minimum wage violations at multiple locations over a six-month period in 2016.[30]

In 2019, **Jamba Juice** agreed to pay $1.95 million to settle a class action lawsuit in California that alleged the company had forced more than 5,000 employees to work during their breaks and had failed to pay them the overtime wages they were owed.[31] The lawsuit alleged

that Jamba Juice required employees to perform work while they were off the clock, such as using their own cars to drive to the bank and make deposits for the company. The settlement covered employees at Jamba Juice from 2010 until August 2018.[32] Roark acquired Jamba Juice in September 2018.[33]

In 2017, an **Arby's** franchisee in Florida settled a class action lawsuit, in which the lead plaintiff alleged that she worked up to 15 overtime hours a week during the previous three years, for which she was not paid overtime wages.[34] Roark Capital bought Arby's in 2011.[35]

In 2018, the owner of ten **Buffalo Wild Wings** restaurants in Ohio and Arizona agreed to pay $1.55 million to settle a lawsuit covering over 1,200 workers for alleged minimum wage and overtime violations between 2014 and April 2018. The lawsuit alleged that servers and bartenders were required to work off the clock and that they were paid less than minimum wage because they were "tipped" workers, even though they spent a significant amount of their time doing non-tip-producing tasks.[36] Roark acquired Buffalo Wild Wings in November 2017.[37]

Liability for Franchisee Actions

> **A federal judge's ruling in 2020 expanded the circumstances of when a parent corporation is considered a joint employer, and thus liable for its franchisees' actions, to include if the parent has the authority to control, even indirectly, the terms of employment.**

The multitude of wage theft cases at Roark Capital-owned brands such as Dunkin Donuts, Sonic, Jimmy John's, Hardees, Carl's Jr., Jamba Juice, Buffalo Wild Wings, and Arby's could be a liability for Roark, especially considering a federal court ruling last year.

In September 2020, a federal judge struck down a Trump administration rule regarding whether a corporate parent could be held liable as a "joint employer" for violations by a franchisee of the wage-and-hour provisions of the federal Fair Labor Standards Act.[38]

The Trump administration's rule had a very narrow definition of joint employer – only if the corporate parent exercised significant control over the employee's work, such as by hiring, firing, or supervising.[39] This made it harder for employees of a franchisee to hold the parent corporation responsible for minimum wage and overtime violations committed by their franchisees.[40]

The judge's ruling in 2020 expanded the circumstances of when a parent corporation is considered a joint employer and liable for its franchisees' actions. Under the broader definition, a business can be deemed a joint employer if it has the authority to control, even indirectly, the terms and conditions of employment.[41]

This means that Roark's Inspire Brands and other Roark portfolio companies could be held responsible for wage and hour violations by their franchisees.

In response to the recent court decision, Mark Siebert, founder of iFranchise Group, which consults for several Roark-owned franchisors including Buffalo Wild Wings and Auntie Anne's Pretzels, said that franchisors either need to "exercise more control, to make sure their franchisees are in compliance with all the HR laws that are out there, in which case they incur more expense. Or they can try to stay as far away as possible from control," and risk losing control of the brand.[42]

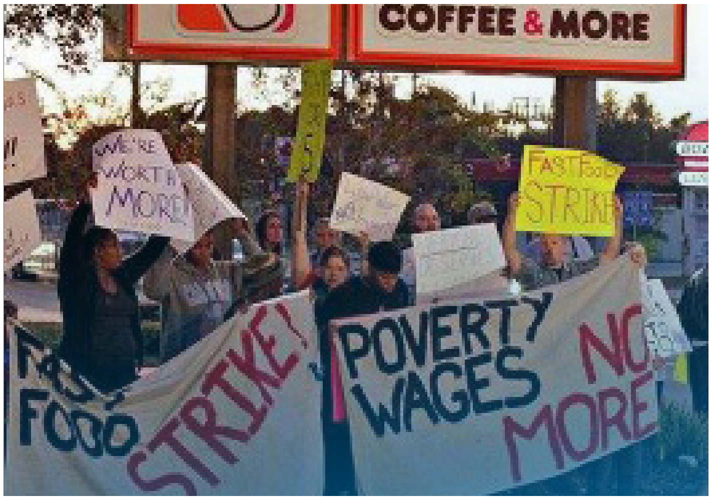
Poverty Wages

Forty percent of American restaurant workers live in near poverty.[43]

Many of the jobs at Dunkin' Donuts and the other Roark Capital-owned brands are paid between $10/hr. - $12/hr., which means that even when they receive all the wages they are entitled to, full-time workers earn less than $25,000.

Low wages not only harm workers and their families – they cost taxpayers. When workers at Roark Capital-owned companies are unable to afford the basic necessities of life, taxpayers pick up the tab for the public benefit programs that workers rely on to get by.

More than half of the families of fast-food workers are enrolled in one or more public safety net programs, such as Medicaid, the Children's Health Insurance Program (CHIP), or Supplemental Nutrition Assistance Program (SNAP), commonly known as food stamps. A 2021 study found that more than two-thirds of fast-food workers in California were either enrolled themselves or had a family member enrolled in a public program, costing the public $4 billion a year.[45]



A recent report from the US General Accounting Office (GAO) found that a number of Roark Capital-owned fast food chains including Dunkin' Donuts, Sonic, Arby's, and Hardee's had among the highest number of workers relying on food stamps and/or Medicaid in multiple states.[46]

BRANDS	POSITION	AVERAGE HOURLY WAGE FROM GLASSDOOR.COM[44]
Jamba Juice	Team Member	$12/hr.
Dunkin' Donuts	Crew Member	$11/hr.
Carl's Jr	Cashier	$11/hr.
Sonic Drive-In	Team Member	$10.60/hr.
Jimmy John's	Sandwich Artist	$10/hr.
Arby's	Team Member	$10/hr.
Hardee's	Crew Member	$10/hr.

How Roark Capital Keeps Wages Low

In March 2021, Roark Capital-owned Inspire Brands sent employees and franchisees a report of its government lobbying activity. The report highlighted its success in helping to kill the federal Raise the Wage Act, which would have raised the minimum wage to $15/hour. The U.S. House of Representatives had included the Raise the Wage Act in its March 2021 COVID Relief bill, but it was taken out of the Senate version.[47]

"You get the impression that they're actively spitting in our eye, saying 'Yes, we worked to suppress the wages of our employees and we're just going to brazenly tell you,'" one Inspire Brands worker said.[48]

Roark Capital also has close ties with the National Restaurant Association (NRA), which has been one of the major opponents of raising the federal minimum wage, spending $2.6 million on lobbying against the Raise the Wage Act last year.[49]

- Geoff Hill, a Roark Capital Managing Director, has been on the NRA's board of directors since 2010[50] and is the chair of the NRA's Education Foundation.[51]

- In 2013, Roark Capital acquired Miller's Ale House, a casual dining restaurant chain with 65 locations. One of the conditions of the purchase was that Phil Hickey, who was the Chairman of the National Restaurant Association, be appointed Chairman of Miller's Ale House.[52]

In contrast to Roark Capital, many other large restaurant chains have realized that they could continue to operate profitably with a $15 minimum wage and decided they would no longer support the National Restaurant Association's (NRA) opposition to raising the minimum wage.

- In 2019, McDonalds sent a letter to the NRA stating that the company would "not use our resources, including lobbyists or staff, to oppose minimum wage increases," at any level, and that it would not "participate in association advocacy efforts designed expressly to defeat wage increases."[53]

- Earlier this year, the CEO of McDonalds told investors that they've "developed quite a bit of experience" with the minimum wage hikes at the state level and as long as they're done in a staged way, "McDonalds will do just fine."[54]

- This spring, Denny's CFO reported to investors that the California law which is gradually raising the minimum wage to $15 by 2023 has actually been good for business and that its California restaurants have outperformed other states.[55]

- In February, Domino's Pizza CEO said, "We've been able to manage our way through a lot of minimum wage increases across the country. And we're not paying the federal minimum wage anyway. You can't go out there and hire people at that rate."[56]

Operational Risk

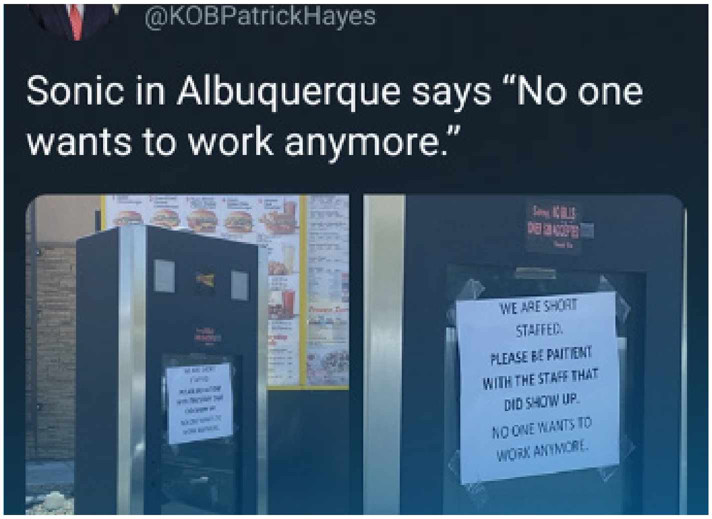
In the spring and summer of 2021, there have been numerous news stories about restaurants and fast-food chains struggling to hire enough workers, which has put a strain on existing workers, causing many of them to quit.

Roark Capital-owned Sonic Drive-In and Jimmy John's have been featured in a number of these stories about how low pay and poor working conditions have resulted in labor shortages and as a result, restaurants have had to cut store hours or close their dining spaces.[57]

In one of the news stories, an assistant manager who worked at Jimmy John's for five years before recently quitting said, "New employees would come in, work for a day or two, and then never show back up – and I don't blame them. Nobody deserves to be treated the way that customer service staff is these days."[58]

A recent social media post that went viral showed a sign at a Sonic drive-through apologizing for being short-staffed because "No one wants to work anymore."

In another article, the owner of over 50 Sonic restaurants in Louisiana said that he could use as many as 10 workers more at each location, even though he had raised the starting wage to $8/hour and occasionally gave workers cookies or cake during their shift. "We're just not getting a lot of applications. This (issue) didn't just happen. It's exaggerated right now, but staffing in our industry has been in a bit of a decline for a couple of years," the Sonic franchisee said.[59]



While this is an industry-wide problem, it poses a large operational risk for Roark Capital since so many of its investments are in the fast-food industry.

Perhaps not surpisingly, two Roark-Capital owned companies, Sonic and Dunkin' Donuts, account for two of the three restaurant chains with the lowest levels of employee satisfaction. This is according to investment bank UBS, which tracked data from 2019 to 2021, in order to get a full picture before, during, and after the pandemic.[60]

Conclusion

Roark Capital-owned companies and their franchisees now employ close to 1 million people. The majority of these employees are in food service jobs, the lowest paid occupational group in the U.S., in the industry with the most instances of wage theft.

As shown in this report, wage theft has been rampant at Roark Capital-owned companies, which poses an even greater liability considering a recent court ruling that expanded the definition of joint employer.

There are serious questions that current and potential investors need to ask Roark Capital:

- What is Roark Capital going to do to address wage theft at Dunkin' Donuts and Roark's other brands?
- How is Roark Capital managing the human capital risk that comes from paying poverty wages?
- How is Roark Capital addressing the operational risk of not being able to hire enough employees to staff its restaurants?
- Is Roark Capital's business model dependent on paying poverty wages, and is this why the company is fighting so hard against raising the minimum wage, at a time when other large restaurant chains have dropped their opposition?

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