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Is Court Approval Still Required for FLSA Settlements? An examination of current trends

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About the Presenter

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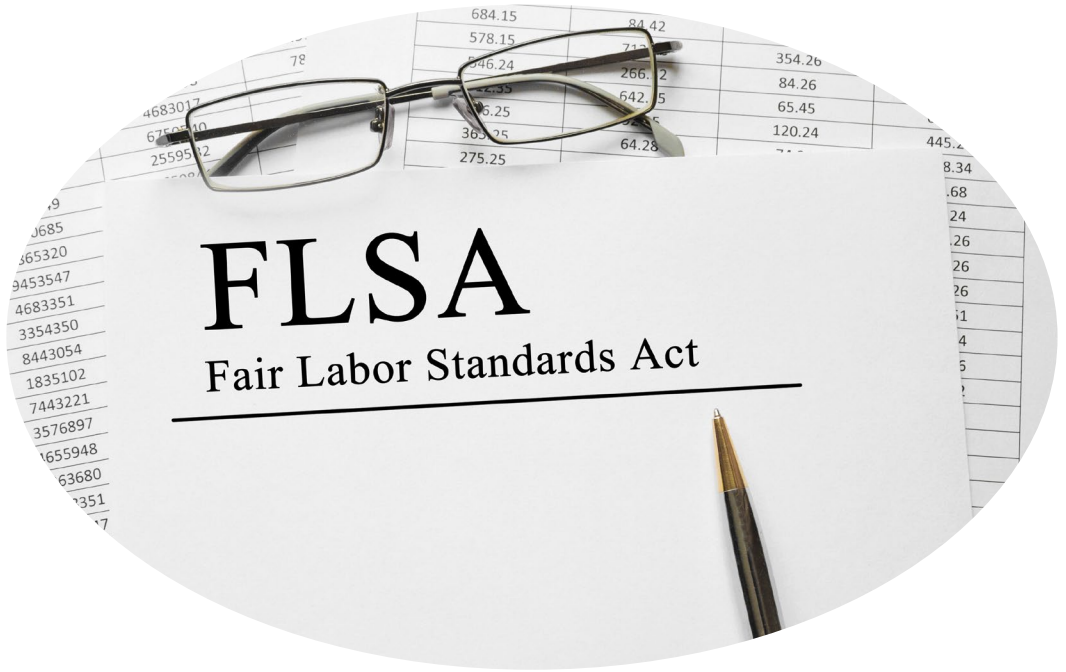
- Defends employers nationally in federal and state court litigation involving all major employment statutes, represents them in related government investigations, and counsels them proactively on compliance with these statutes.
- Focuses a significant portion of her practice on wage and hour-related compliance and litigation under the Fair Labor Standards Act (FLSA) and applicable state laws governing wages and pay practices. She also defends clients in complex class action litigation involving a variety of federal and state statutes as well as claims under the common law.

Pertinent FLSA Provisions

- **29 U.S.C. § 216(b):** Permits employees to bring private lawsuits, either on individual or collective basis, to recover alleged unpaid minimum or overtime wages and liquidated damages.

- **29 U.S.C. § 216(c):** Permits the Dept. of Labor (DOL) to supervise payment of unpaid minimum or overtime wages and agreement constitutes waiver of private claims.



Lynn's Food Stores, Inc. v. United States 679 F.2d 1350 (11th Cir. 1982)

Background:

- DOL investigation concluded that employer was liable for back wages and liquidated damages.
- DOL and employer attempted to negotiate settlement but were unsuccessful.
- Employer approached employees (who were unrepresented by counsel) directly and offered $1,000 to be divided on a pro rata basis (DOL calculated back wages at over $10,000).
- Approx. 14 employees agreed and signed waivers.
- Employer then brought declaratory judgment action against DOL, seeking ruling that it was free from liability under FLSA pursuant to agreements entered into directly with employees.

Lynn's Food Stores, Inc. v. United States 679 F.2d 1350 (11th Cir. 1982)

Holding:

- The Eleventh Circuit affirmed the district court's dismissal of the employer's action and held that there are only two ways an FLSA claim can be extinguished:
  1. Payment supervised by the DOL; or
  2. A "stipulated judgment entered by a court which has determined that [the] settlement … is a fair and reasonable resolution of a *bona fide* dispute."

Lynn's Food Stores, Inc. v. United States

- "The FLSA was enacted for the purpose of protecting workers from substandard wages and oppressive working hours. Recognizing that there are often great inequalities in bargaining power between employers and employees, Congress made the FLSA's provisions mandatory; thus, the provisions are not subject to negotiation or bargaining between employers and employees."

Post-*Lynn's Food*

- District courts broadly applied its holding to require parties to seek court (or DOL) approval of an FLSA settlement – even if both sides were represented by competent counsel.
- However, there has been a Circuit split in the years since *Lynn's Food* was decided.

Martin v. Spring Break '83 Productions 688 F.3d 247 (5th Cir. 2012)

Background:

- Represented plaintiffs filed a union grievance alleging that they had not been paid for all hours worked.
- Union negotiated a settlement on behalf of employees where employees waived their right to file any lawsuits.
- Plaintiffs filed a lawsuit under the FLSA for the same wages they had recovered through the union-negotiated agreement.

Martin v. Spring Break '83 Productions

Holding:

- The Fifth Circuit affirmed the district court's entry of summary judgment in favor of defendant-employer based on the prior settlement agreement, holding that the agreement was enforceable even though it had not been approved by a court or the DOL because the plaintiff's FLSA rights had been "validated through a settlement of a *bona fide* dispute, which [plaintiffs] accepted and were compensated for," all hours worked.
- "Here, [the employees] accepted and cashed settlement payments – [the employees'] FLSA rights were adhered to and addressed through the Settlement Agreement, not waived or bargained away. The concerns . . . that substantive FLSA rights would be bargained away . . . are not implicated by the situation here where [the employees'] Union did not waive FLSA claims, but instead [the employees], with counsel, personally received and accepted compensation for the disputed hours."

Cheeks v. Freeport Pancake House 796 F.3d 199 (2d Cir. 2015)

Background:

- Employee-plaintiff filed FLSA lawsuit and parties engaged in some discovery.
- The parties agreed to private settlement of plaintiff's claims and filed a joint stipulation and order of dismissal under Fed. R. Civ. P. 41(a)(1)(A)(ii).
- The district court directed the parties to file a copy of the agreement for approval, but the parties instead moved for an interlocutory appeal.

Cheeks v. Freeport Pancake House

Holding:

- The Second Circuit held that the FLSA is an exception to Rule 41(a)(1)(A)(ii)'s general rule that parties are free to dismiss an action without involvement of the court.
- Thus, "Rule 41(a)(1)(A)(ii) stipulated dismissals settling FLSA claims with prejudice require the approval of the district court or the DOL to take effect."

Cheeks v. Freeport Pancake House

- "We are mindful of the concerns . . . that the vast majority of FLSA cases . . . are simply too small, and the employer's finances too marginal for proceeding with litigation to make financial sense if the district court rejects the proposed settlement. However, the FLSA is a uniquely protective statute. The burdens described [above] must be balanced against the FLSA's primary remedial purpose: to prevent abuses by unscrupulous employers, and remedy the disparate bargaining power between employers and employees. … [T]he need for such employee protections, even where the employees are represented by counsel, remains."

Mei Xing Yu v. Hasaki 944 F.3d 395 (2d Cir. 2019)

Background:

- Employee-plaintiff filed lawsuit under FLSA.
- Employer sent a Rule 68 offer of judgment for $20,000 plus reasonable attorneys' fees, costs, and expenses through the date of the offer.
- Plaintiff timely accepted, and the parties notified the court.
- The district judge ordered the parties to submit their settlement agreement for approval pursuant to *Cheeks*.

Mei Xing Yu v. Hasaki

Holding:

- The Second Circuit held that court approval of FLSA settlement was not required where the parties seek dismissal in connection with a Rule 68(a) offer of judgment, thus declining to extend *Cheeks'* holding because Rule 68(a) does not contain the same explicit exception as Rule 41(a)(1)(A) that judicial approval of a stipulated dismissal is necessary if a federal statute requires.
- "In light of the unambiguously mandatory command of Rule 68(a) for the clerk of the court to enter offers of judgment when they are accepted, and because we find no indication by Congress or the Supreme Court that the FLSA requires judicial approval of stipulated judgments concerning FLSA claims in the context of ongoing litigation, we decline to pull such a requirement out of thin air with respect to Rule 68(a) offers of judgment settling FLSA claims."

Other Circuits

- Other than the Second, Fifth and Eleventh Circuits, the other circuits have not decided whether the FLSA requires judicial approval.
- The First, Third, Sixth, Tenth, and District of Columbia Circuits have not expressly addressed the issue.
- The Fourth, Seventh, Eighth, and Ninth Circuits have acknowledged the requirement, but not directly opined on its propriety
  - *Taylor v Progress Energy, Inc.*, 493 F.3d 454, 460 (4th Cir. 2007) (recognizing judicial approval requirement for FLSA settlements in evaluating whether such approval is required for settlements under the FMLA), *overrule by regulation as recognized in Whitting v. The Johns Hopkins Hosp.*, 416 F. App'x 312, 314 (4th Cir. 2011)
  - *Walton v. United States Consumers Club, Inc.*, 786 F.2d 303, 308 (7th Cir. 1986)
  - *Copeland v. ABB, Inc.*, 521 F.3d 1010, 1014 (8th Cir. 2008)
  - *Seminiano v. Xyris Enter., Inc.*, 602 F. App'x 682, 683 (9th Cir. 2015)

Turning of the Tide in District Courts: Pre-litigation

- *Young Min Lee v. New Kang Suh Inc.*, No. 17-cv-9502, 2020 U.S. Dist. LEXIS 16677 (S.D.N.Y. Sept. 11, 2020) (holding that prelitigation FLSA settlements must be evaluated on a case-by-case basis to determine whether they are enforceable).
  - The magistrate judge assigned to review the agreement held it unenforceable after applying traditional contract principles because it found the agreement to be "the product of exploitation and one-sided bargaining."
- *Saari v. Subzero Eng'g*, No. 2:20-cv-00849, 2021 U.S. Dist. LEXIS 179054 (D. Utah Sept. 17, 2021) (holding that a pre-litigation agreement releasing claims under the FLSA was binding even though not judicially approved because approval only required in "exceptional circumstances," *i.e.*, where there is "evidence of malfeasance or overreaching in obtaining a settlement.")

Turning of the Tide in District Courts: Full Damages

- *Friedly v. Union Bank & Trust Co.*, No. 4:21-cv-3105, 2021 U.S. Dist. LEXIS 233948 (D. Neb. Nov. 19, 2021) (holding that proposed FLSA settlement in a collective action did not require judicial approval where the terms of the settlement "provide[d] the full measure of FLSA damages.") ("[W]here the terms of the settlement provide the full measure of FLSA damages . . . there has been no compromise of workers' rights requiring court approval. Therefore, settlement of the dispute is solely in the hands of the parties.") (internal quotation and citation omitted)
- *Beard v. Suwanne Valley Grassing, Inc.*, No. 3:21-cv-901, 2022 U.S. Dist. LEXIS 106792 (M.D. Fla. June 15, 2022) ("However, where an employer offers a plaintiff full compensation on his FLSA claim, there is no compromise and judicial approval is not needed.")

Alcantara v. Duran Landscaping No. 2:21-cv-03947, 2022 U.S. Dist. LEXIS 122552 (E.D. Pa. July 12, 2022) (Wolson, J.)

Background:

- Two employees filed a lawsuit under FLSA for alleged unpaid overtime.
- The parties resolved and asked the court to approve their settlement.
- Given the small size of the amount at issue (and settlement) plaintiffs requested a phone call rather than a formal briefing on the settlement.
- Judge Wolson *sua sponte* raised the question of whether the court had to approve the settlement and invited briefing from the parties.
  - The DOL also submitted a letter.

Alcantara v. Duran Landscaping

Holding:

- Judge Wolson held that court-approval was not required, and the parties were free to enter into a private agreement and seek dismissal with prejudice under Rule 41.
- "To stay true to Rule 41's language, it is incumbent on courts to avoid throwing up procedural hurdles to settlement. The rule requiring prior court approval of an FLSA settlement is an example of just such a procedural hurdle. The rule has no support in the FLSA's text; it is a judge-made rule that makes litigation slower and more expensive and is at odds with the text of Rule 41. … [E]mployees represented by counsel can decide for themselves whether to settle a case, and the Court will not continue to be an impediment to settlement in these cases."

Askew v. Inter-Continental Hotels No. 5:19-cv-24, 2022 U.S. Dist. LEXIS 140459 (W.D. Ky. Aug. 8, 2022) (Beaton, J.)

Background:

- Three plaintiffs brought a putative collective action under the FLSA for alleged failure to pay minimum wage.
- The court conditionally certified the collective, and after the notice period 14 opt-ins joined.
- The three named plaintiffs then filed two stipulated dismissals under Rule 41.
  - The first voluntarily dismissing without prejudice 6 of the opt-in plaintiffs because they were paid at or above minimum wage.
  - The second for dismissal of the matter with prejudice without explanation.

Askew v. Inter-Continental Hotels

Holding:

- Judge Beaton held that the FLSA is not an "applicable federal statute" under Rule 41(a)(1)(A) that prevents the parties from dismissing an FLSA action at their request, thus reaching a different conclusion from the Second Circuit in *Cheeks*.
- "[T]he FLSA itself contains no language requiring judicial approval of settlement agreements. The statute mentions the court only in the very different context of attorney fees and costs. Although the statute expressly cites the Secretary's supervisory role and the employee's waivers, it doesn't condition the validity of an employee's dismissal on the court's approval of an underlying settlement. … In short, nothing in the FLSA's text or context renders it an "applicable federal statute" for Rule 41 purposes. In fact, many aspects of its text and context suggest Congress did *not* intend of override Rule 41's default that plaintiffs may dismiss suits regardless of what a judge thinks about that move."

What's Next?

- Hopefully, the U.S. Supreme Court will weigh in to resolve the question of whether parties must obtain court or DOL approval to resolve FLSA claims, both before and during litigation.
- Until then, resolving an FLSA claim outside of the Fifth Circuit without judicial approval continues to pose risks.
- There is still no binding precedent in the First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth and D.C. Circuits.

Questions