

Employees May Soon Have Something To Lose In FLSA Lawsuits

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The deck in Fair Labor Standards Act lawsuits has long been stacked against employers. Even if the employer *wins* at trial, its legal fees and costs will likely be hefty – six figures or more. And if the employer *loses*, it may have to pay double – or even triple – the plaintiffs’ actual damages and the plaintiffs’ costs and fees, on top of its own costs and fees. It can feel like employees have nothing to lose and like employers are destined to “lose” even if they win. And, as a result, many employers are compelled to settle FLSA lawsuits even if they have done nothing wrong. Employers who hope to buck this trend should be aware of a case that is presently on appeal in the Eighth Circuit. In *Garrison v. ConAgra Foods*, a class of salaried, management-level employees sued under the FLSA, alleging that they had been misclassified as exempt employees and that they are entitled to overtime. An Arkansas federal court ruled in favor of the employer, but it rejected the employer’s attempt to recover nearly \$16,000 in costs. Both sides have appealed, and if the Eighth Circuit ultimately finds in the employer’s favor, the employees could be responsible for paying those costs. Of course, \$16,000 is peanuts compared to the legal fees that the employer must have incurred in the lawsuit. Still, the case is significant because the fact that employees could be on the hook for some part of an employer’s bill might dissuade some from bringing questionable lawsuits in the future. We will continue to monitor the case and will provide an update when the appeal is decided.

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