

## Offers Of Judgment Support Dismissal Of Wage And Hour Claims

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A federal district court in Illinois recently granted an employer's motion to dismiss federal and state wage and hour claims asserted by two employees because the court determined it lacked subject matter jurisdiction. In [Avila v Watts Electric Co, Inc](#), the employer made offers of judgment to both employees, which included the "total amount of wages owed" and "reasonable attorney's fees and costs to be determined by the court." The plaintiffs each rejected these offers of judgment. Watts Electric Co. then filed a Rule 68 motion to dismiss for lack of subject matter jurisdiction, arguing that the failure to accept the offers of judgment deprived the court of jurisdiction and rendered the case moot.

The court agreed and dismissed the matter. As the court explained, both plaintiffs must have a personal interest in the case "at the beginning of the litigation, and their interests must persist throughout its entirety." Once a litigant loses his personal interest at any time, the case becomes moot and the court no longer has subject matter jurisdiction since there is no longer a controversy over which the court can assert judicial power. Subject matter jurisdiction challenges can either be facial or factual. A facial challenge attacks the sufficiency of the plaintiff's complaint and, in response, the plaintiff must "only show the existence of facts that could . . . establish standing." In comparison, a factual challenge accepts the sufficiency of the plaintiff's complaint, but attacks the personal interest in which the plaintiff has in such case and, in response, the plaintiff bears the burden of coming forward with competent proof that standing exists.

In *Avila*, the employer presented a factual challenge under Rule 68, arguing that the case became moot once it made a full and complete offer of judgment to satisfy the plaintiffs' entire demands. In support of this argument, Watts Electric presented sworn affidavits with the two offers of judgment as well as the payroll records for the time periods in which the plaintiffs alleged wage and hour violations, demonstrating that offers were complete. The court found that the plaintiffs provided no support for their arguments that the offers were incomplete or questionable. Because the plaintiffs failed to meet their burden and no motion for class certification under the FLSA was filed, the federal court granted the employer's motion and dismissed the case.

The *Avila* decision is good example in which a thoughtful defense litigation strategy can minimize the costs and potential damages an employer could incur in a wage and hour matter.

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