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Revisiting Judicial Approval Of Fair Labor Standards Act Settlements

June 19, 2014 | | Fair Labor Standards Act, Currents - Employment Law

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Over the past few weeks, there have been a slew of reported decisions in which federal judges have struck down proposed settlements of Fair Labor Standards Act claims. As many employers familiar with the FLSA know, court approval has long been recognized as a prerequisite for settling FLSA claims. Typically, court approval is not a difficult process: by the time the parties seek out the court's blessing, they already have hammered out most of the terms following arm's length negotiations. In other words, all the hard work is done by the time the proposed settlement lands on the judge's desk. A recent example of this can be seen in *Camp v. City of Pelham*, where an Alabama federal court approved an FLSA settlement in which the plaintiffs received 100% of the wages they claimed and the named plaintiffs not only participated in the settlement discussions but also consented to the terms of the agreement. A year ago, we wrote about a new pattern that seemed to be developing in federal courts to move away from prior court approval of typical FLSA settlements. The cases – one out of New York (*Picerni v. Bilingual Seit & Preschool, Inc.*) and another out of the Fifth Circuit (*Martin v. Spring Break '83 Productions LLC*) – both enforced FLSA settlements despite the lack of prior court approval. Indeed, the New York court even went so far as to opine that based on its analysis of the FLSA's history, private settlements *did not need* court approval. The conclusions reached by these courts, however, is far from universal. At the opposite end of the spectrum there are cases like *Moreno v. Regions Bank*, which rejected a proposed settlement because the release language was too broad. (The language contained the typical general release of "any and all claims" one would expect to see in a settlement agreement.) In that court's view, the FLSA obligates employers to pay the full amount of wages owed without condition and that by including valuable, non-cash concessions such as a release of claims, this would water down the employer's payment to less than "full compensation." Relying in part on cases like *Moreno*, a federal court in Florida struck down a proposed settlement agreement in *Stuyvenberg v. Bubba Gump Shrimp Co*. last week. That case involved an overtime claim by a former server at the restaurant who stood to get $1,750 out of the settlement – approximately $250 more than she claimed the company owed her. Despite acknowledging that the amount was more than she sought, the court nevertheless struck down the settlement, in part, because it was unclear whether the amount constituted a full compromise of all claims involved – and particularly whether it included payment for the non-monetary concessions in the settlement agreement (which included standard terms such as a no re-employment provision and a general release of all claims). This decision came shortly after *Daniels v. Aeropostale, Inc.,* where a federal court in California rejected a proposed settlement in which the FLSA claimants agreed to get no money in exchange

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for a general release – a result that the judge described as “one of the worst” settlement agreements he had ever seen. Since very few settlements – particularly FLSA settlements – involve *no money being paid to the plaintiffs at all*, we can probably chalk up the *Aeropostale* case as an extreme example. Nevertheless, both of these recent cases serve as a reminder that the issue of court approval of FLSA settlements is far from resolved. Moreover, both cases also underscore that judges across the country will not hesitate to reject an agreement that does not pass muster. Accordingly, employers cannot simply assume that they can negotiate a resolution to a pending FLSA case and that courts will merely rubber stamp their efforts. Instead, employers – working in conjunction with effective counsel – need to make sure they proceed in accordance with the requirements of the local jurisdiction and tailor their settlement proposals so that they are in the best position to pass an examination by the court.