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More and More Courts Are Eschewing Mandatory Approval of FLSA Settlements

Although recent district court opinions may signal a turning of the tide on the court-approval requirement for FLSA actions, the law in this area clearly is in a state of flux.

BY ANDREA M. KIRSHENBAUM AND LEANNE LANE COYLE

The court-approval requirement for settlements under the Fair Labor Standards Act has long posed challenges for employers and employees alike. Since the U.S. Court of Appeals for the Eleventh Circuit's seminal decision in 1982 in *Lynn's Food Stores v. United States* holding that parties are required to obtain court approval of FLSA settlements in order to fully extinguish those claims, courts around the country largely have followed its requirements. As a result, in order to obtain a complete waiver of FLSA claims, parties either needed approval from a court or the U.S. Department of Labor.

This requirement creates a whole host of issues, oftentimes slowing down the process, increasing costs to the parties, and sometimes even derailing resolution. However, over the last several years, several federal courts increasingly have questioned this requirement, casting doubt on the continued vitality of *Lynn's Food*.

In a recent decision, *Alcantara v. Duran Landscaping*, U.S. District Judge Joshua D. Wolson of the Eastern District of Pennsylvania flatly rejected the notion that the FLSA requires judicial approval for the parties to settle a claim. U.S. District Judge Benjamin Beaton of the Western District of Kentucky reached a similar conclusion in *Askew v. Inter-Continental Hotels*, holding that judicial approval for an FLSA settlement was not required.

Courtesy photos

Andrea M. Kirshenbaum, left, and Leanne Lane Coyle, right, of Post & Schell.

History of the Court-Approval Requirement

Prior to the filing of the *Lynn's Food* case, the DOL conducted an investigation and concluded that Lynn's Food Store had violated provisions of the FLSA, making it liable for back wages and liquidated damages. After unsuccessful attempts to negotiate a settlement with the DOL, the Lynn's Food Store entered into agreements

directly with its employees, who were unrepresented by counsel at the time. Lynn's Food Store then brought a declaratory judgment action against the DOL seeking a ruling that it was free from liability arising under the FLSA because of the agreements that it entered into directly with its employees.

The district court dismissed the action, finding that the settlement agreement violated the FLSA. The Eleventh Circuit affirmed, holding that there are only two ways an FLSA claim can be extinguished, either through: (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."

In the years immediately following the Eleventh Circuit's 1982 *Lynn's Food* decision, federal 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.

Post-'Lynn's Food' Circuit Split

The U.S. Court of Appeals for the Fifth Circuit departed from *Lynn's Food* in its 2012 decision in *Martin v. Spring Break '83 Productions.* In *Martin*, the union-represented plaintiffs filed a grievance alleging that they had not been paid for all hours worked. The union entered into a settlement agreement with the defendant-employer where the plaintiffs waived their right to file any lawsuits. Thereafter, the plaintiffs filed a lawsuit under the FLSA with respect to the same wages they already had recovered through the union. The district court entered summary judgment in favor of defendant based on the prior settlement agreement with the union and the Fifth Circuit affirmed, holding that the settlement agreement was enforceable even though it had not been approved by either a court or the DOL. In reaching its conclusion, the Fifth Circuit reasoned that plaintiffs' FLSA rights had been "validated through a settlement of a bona fide dispute, which [plaintiffs] accepted and were compensated for," all hours worked.

Three years later, the U.S. Court of Appeals for the Second Circuit in *Cheeks v. Freeport Pancake House* held that where plaintiff already had filed a lawsuit under the FLSA, she could not privately agree to release her FLSA claims and stipulate to their dismissal with prejudice under Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. The Second Circuit reasoned that the FLSA was an exception to Federal Rule of Civil Procedure 41(a)(1)(A)(ii)'s general rule that parties are free to dismiss an action without involvement of the court. Four years later, the Second Circuit in *Mei Xing Yu v. Hasaki Restaurant* held that court approval of an FLSA settlement is not required where the parties seek dismissal in connection with a Rule 68(a) offer of judgment.

Other than the Second, Fifth and Eleventh circuits, no other circuit has not directly taken up the issue of whether the FLSA requires judicial approval to extinguish claims under the statute. The Fourth, Seventh, Eighth and Ninth circuits have acknowledged the requirement, but have not directly opined on its propriety. The First, Third, Sixth, Tenth and D.C. .ircuits have not expressly addressed the issue.

Turning of the Tide?

The most recent cases to address the court-approval requirement directly question the validity of *Lynn's Food* and *Cheeks*. In July, Wolson in *Alcantara* questioned the *Lynn's Food's* "judge-made rule," contrasting its fact pattern of a pre-litigation agreement entered into by unrepresented employees with litigation

between parties represented by sophisticated counsel. Wolson also questioned the *Cheeks* decision by pointing out that its holding was neither based on the text of Rule 41 or the FLSA, but instead on the "unique policy considerations underlying the FLSA," reasoning that, "policy cannot overcome the text of a statute." The *Alcantara* court pointed to the strong policy considerations that weigh against requiring courts to approve FLSA settlements. Ultimately, 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 Federal Rule of Civil Procedure 41.

Just a few weeks later, Beaton similarly rejected the *Cheeks* decision in *Askew* by holding 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. Beaton also reasoned that there was no authority in the text of the FLSA or Rule 41 to prevent parties from voluntarily dismissing an action absent court intervention.

In 2020, the Southern District of New York held in Young *Min Lee v. New Kang Suh* that pre-litigation FLSA settlements must be evaluated on a case-by-case basis to determine whether they are enforceable. Just last month, 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."

In 2021, the District of Utah held in *Saari v. Sub-zero Engineering* that a pre-litigation agreement releasing claims under the FLSA was binding even though it was not judicially approved. The court reasoned that individual FLSA settlements do not require DOL or judicial approval except in "exceptional circumstances," i.e. where there is "evidence of malfeasance or overreaching in obtaining a settlement." In November, 2021, in *Friedly v. Union Bank & Trust*, the District of Nebraska held that a 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."

What Employers Need to Know

Although recent district court opinions may signal a turning of the tide on the court-approval requirement for FLSA actions, the law in this area clearly is in a state of flux. Indeed, several district court opinions within the Third and Sixth circuits have continued to follow *Lynn's Food* in reviewing and approving FLSA settlement agreements when requested to do so by the parties.

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. While certain district courts have cast doubt on the court-approval requirement, there still is no binding precedent in the First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth and D.C. circuits. In those jurisdictions, employers should proceed with caution as they navigate the changing landscape.

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