

Fifth Circuit Weighs in On Issue of First Impression, Permits Private Settlement of FLSA Wage and Hour Dispute Without Court Approval

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As the filing of wage and hour claims under the Fair Labor Standards Act ("FLSA") continues to rise, a recent decision by the United States Court of Appeals for the Fifth Circuit offers employers guidance on the permissibility of private settlements of such claims. For years, employers and employment law practitioners have struggled with the issue of how best to settle pre-lawsuit claims for unpaid overtime or minimum wages under the FLSA without supervision by a court or the Department of Labor ("DOL"). There has long been one obstacle to consider in these settlements, primarily based on a 30-year-old decision out of the Eleventh Circuit,¹ that FLSA claims cannot be settled without the approval of the Department of Labor or the courts. On July 24, 2012, the Fifth Circuit issued an opinion in which it held that a private settlement of a bona fide dispute regarding hours worked is enforceable even without court supervision.

In *Martin v. Spring Break '83 Productions*, Case No. 11-30671, 2012 U.S. App. LEXIS 15285 (5th Cir. July 24, 2012), a group of lighting and rigging technicians, or "grips," that worked on the filming of a movie filmed in and around Hammond, Louisiana, called "Spring Break '83" filed a grievance through their union, claiming that they had not been paid wages for work they performed. A representative from the union investigated the claims and concluded that it would be impossible to determine whether the plaintiffs had worked on the days they alleged. As a result, the union (on behalf of the plaintiffs) and defendant Spring Break '83 Louisiana, L.L.C. entered into a settlement agreement in which the grips were compensated for a certain number of hours worked. However, before the settlement agreement was signed by the union representatives and became binding, the grips filed a lawsuit for wage and hour violations in California state court. The case was removed to federal court and ultimately transferred to the United States District Court for the Eastern District of Louisiana.

In the federal court action, the defendants filed for summary judgment, arguing in part that the plaintiff grips' claims under the FLSA were released by the settlement agreement. The district court agreed, and the Plaintiffs appealed the district court's decision to the Fifth Circuit.

The Fifth Circuit agreed with the district court, holding that the payment² under the settlement agreement "was an enforceable resolution of those FLSA claims predicated on a bona fide dispute about time worked and not as a compromise of guaranteed substantive rights themselves." The court distinguished the facts of this case from those in the Eleventh Circuit's decision regarding *Lynn's Food Stores*. In that case, the dispute had arisen "as a result of a Department of Labor investigation and 'the employees seemed unaware that the Department of Labor had determined that Lynn's owed them back wages under the FLSA, or that they had any rights at all under the statute. There is no evidence that any of the employees consulted an attorney before signing the agreements. Some of the employees who signed the agreement could not speak English.'" In contrast, the Fifth Circuit held the plaintiffs "were already benefiting from legal counsel before the Settlement Agreement was signed," and "knew about their rights under the FLSA . . ." Thus, the Court held, the plaintiff grips' settlement with the defendants "did not occur outside the context of a lawsuit, hence the concerns that the Eleventh Circuit expressed in *Lynn's Food Store* are not implicated." This decision by the Fifth Circuit aligns with a district court decision from the Western District of Texas. In *Martinez v. Bohls Bearing Equipment Co.*, 361 F.Supp.2d 608 (W.D. Tex. 2005), an employee and his employer disagreed over the amount of overtime pay that he was owed. The employee accepted a check in settlement of the overtime claims. In upholding this private settlement of the employee's claim for overtime, the district court held that "parties may reach private compromises as to FLSA claims where there is a bona fide dispute as to the amount of hours worked or compensation due."

Obviously, the Fifth Circuit placed significant importance on the fact that the plaintiff grips in *Martin* were being advised by legal counsel and were aware of their rights under the FLSA. Therefore, employers within the Fifth Circuit (Texas, Louisiana and Mississippi) now have additional support for entering into private settlement of bona fide FLSA-related disputes regarding payment for time worked, without supervision by a court or the DOL, especially in instances where it can be demonstrated that the employees were aware of their rights under the FLSA and had the benefit of legal counsel before entering into such an agreement. One additional advantage to the private settlements approved in *Martin* is that the amount for which employers settle FLSA claims with employees remains confidential. In most court-supervised settlements, the settlement amount becomes part of the public record, and courts have held that sealing or removing the settlement amount from the record is against public policy.⁴

However, it is important to note that the *Martin* decision may not apply to all FLSA-related settlements, namely those where an agreement is entered before there is any dispute over time worked or before any counsel for the employee is involved. Of course, there are other methods that can and have been used by employers to attempt to make releases or settlement agreements involving FLSA claims more enforceable without direct court supervision. For example, employers can advise and encourage employees to consult with an attorney before signing any such agreement. Further, employers can write such agreements clearly so they are easy to understand and to provide within the agreement sufficient information about any existing dispute regarding employee classification, hours worked, payments made or other relevant information. Employers can give employees sufficient time to review and consent to the agreement's terms. Any such settlement agreements should also include language affirming that the employee has been fully compensated for any and all earned wages, which can act as an admission if the employee later sues for alleged unpaid wages. While there is no definitive authority that such methods will entirely shield employers from future FLSA liability, these are some creative solutions available in the face of the continuing open question regarding unsupervised settlements of FLSA claims. As always, the best method for employers to avoid these issues is to audit and update their pay policies to make sure they are in compliance with the FLSA and related wage and hour laws.

It will be worth monitoring future decisions within and outside the Fifth Circuit to see if the holding in *Martin* is expanded. Stay tuned.

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About the Author



J. Michael Rose focuses his labor and employment practice on litigation involving Fair Labor Standards Act ("FLSA") (single plaintiff and collective action); Title VII, Age Discrimination in Employment Act ("ADEA"), and Americans with Disabilities Act ("ADA"); involvement includes trial, taking and defending depositions, drafting dispositive motions, and resolving cases through negotiation and mediation. Mr. Rose also counsels employers on hiring and firing decisions, wage and hour issues, Family and Medical Leave Act issues, collective bargaining issues, employment policies and handbooks, fair credit reporting, and restrictive covenants.

Endnotes

- Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1355 (11th Cir. 1982) ("Other than a section 216(c) payment supervised by the Department of Labor, there is only one context in which compromises of FLSA back wage or liquidated damage claims may be allowed: a stipulated judgment entered by a court which has determined that a settlement proposed by an employer and employees, in a suit brought by the employees under the FLSA, is a fair and reasonable resolution of a bona fide dispute over FLSA provisions.").
- The plaintiff grips filed their lawsuit before the settlement agreement was entered into by the union, but they cashed the Settlement Agreement payment checks they received.
- Quoting *Lynn's Food Stores*, 679 F.2d at 1353-54.
- See *Perry v. Nat'l City Bank*, Case No. 05-cv-891-DRH, 2008 U.S. Dist. LEXIS 10990, at *3, 2008 WL 427771, (S.D.Ill. Feb. 14, 2008) ("Given the nature of the FLSA suit ... the Court finds it important for the settlement to be made accessible to the public ..."); *Bartelloni v. Decastro*, Case No. 05-80910-CIV-COHN, 2007 WL 2155646 (S.D.Fla. July 26, 2007) (confidentiality provision in FLSA settlement was insufficient reason to seal settlement agreement).



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