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Recent U.S. Supreme Court Decision Addresses Offers of Judgment in FLSA Collective Actions

Court Rules Full Offer of Judgment to Individual Plaintiff Can Render a Collective Action Moot, But Falls Short of Entirely Resolving Disputed Issue

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In *Genesis Healthcare Corp. v. Symczyk*, the Supreme Court of the United States dealt with a potentially groundbreaking issue, but left the most important question unanswered with respect to the effect that an offer of full relief to named plaintiffs has on a Fair Labor Standards Act ("FLSA") collective action. No. 11-1059, ___ S. Ct. ___, 2013 WL 1567370 (April 16, 2013).

In a 5-4 decision issued on April 16, 2013, the Supreme Court held that former Genesis Healthcare nurse Laura Symczyk's putative FLSA collective action lawsuit based on her employer's automatic meal break deduction was properly dismissed for lack of subject matter jurisdiction. The Court held that Symczyk, the only named plaintiff in the lawsuit, no longer had an interest in the case once Genesis made a full offer of relief for her individual claims. When Genesis filed its answer, it simultaneously served an offer of judgment on Symczyk under Rule 68 of the Federal Rules of Civil Procedure, which included the alleged unpaid wages and "such reasonable attorney's fees, costs, and expenses … as the Court may determine." This offer included a stipulation that it would be withdrawn if not accepted within 10 days. Symczyk did not respond within that time. Thereafter, Genesis moved to dismiss due to lack of subject matter jurisdiction, arguing that the offer of judgment mooted Symczyk's claim, even though it wasn't accepted. Notably, no other individuals joined the lawsuit or demonstrated an interest in joining prior to the hearing on the motion to dismiss. The district court dismissed Symczyk's lawsuit for lack of subject matter jurisdiction, but the Third Circuit overruled and revived the collective action, holding that even though Symczyk's personal claim against Genesis had been rendered moot by the offer of judgment, her claims on behalf of "similarly situated employees" were not. The Supreme Court granted certiorari and overturned the Third Circuit's decision.

Notably, the Supreme Court did not take a position in Genesis on whether the unaccepted offer of judgment *actually rendered* Symczyk's claims moot. The Court declined to address this issue, finding that Symczyk had waived the issue by not raising it on appeal. Instead, the Court assumed that the plaintiff's individual claim was moot and addressed whether the collective action could survive anyway. It held that it could not, calling its conclusion "[a] straightforward application of well-settled mootness principles."

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The Court's decision not to address whether an unaccepted offer of judgment under Rule 68 moots an FLSA claim is significant because of the current circuit split on this issue. The Third, Fourth and Seventh circuits have held that an unaccepted Rule 68 offer of full relief moots an individual's claim. In contrast, the Second and Sixth circuits have held the claim is not moot. By declining to resolve the split among the appeals courts in Genesis, the Supreme Court failed to provide clarity on an issue for which both sides of the employment law bar have been seeking answers for years.

In terms of the practical effect of this decision for employers, employers now have more support for the argument that an unaccepted offer of judgment that satisfies an individual plaintiff's (or plaintiffs') FLSA claims in full renders a potential collective action moot before the class certification phase, especially within those circuits (Third, Fourth and Seventh) where Courts of Appeals have previously held that full offers of judgment render an individual claim moot. However, the Supreme Court's Genesis decision falls short of making this a "slam-dunk" argument. Further, the Court noted in Genesis that no additional plaintiffs joined the lawsuit prior to the district court's hearing on defendant's motion to dismiss. This is a somewhat rare circumstance in a collective action, as there are often multiple plaintiffs willing to either join the lawsuit as a named plaintiff or who will file "notices of consent" to join the lawsuit even before the conditional certification phase.

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