DECEMBER 16, 2019

JUDICIAL APPROVAL NOT NEEDED FOR ACCEPTED OFFERS OF JUDGMENT IN FAIR LABOR STANDARDS ACT CASES

Is judicial approval required for accepted Rule 68(a) offers of judgment in Fair Labor Standards Act ("FLSA") cases? The U.S. Court of Appeals for the Second Circuit recently said "no" and, in doing so, contradicted at least part of a longstanding view that settlement of all FLSA matters requires either approval by the U.S. Department of Labor ("DOL") or a court.

The FLSA guarantees minimum wage and overtime to non-exempt employees and provides stinging remedies for employers who violate its mandates. In claims under the FLSA, where attorney fees can be awarded to the successful plaintiff as a remedy (as well as double damages), the offer of judgment serves as a valuable tool in the limited defense toolshed. Under the Federal Rules of Civil Procedure, Rule 68(a), a defendant in civil litigation may make an offer – like a settlement offer - at any point up to 14 days before trial. The rejection of an offer presents the plaintiff with significant risk, including the imposition of costs and attorney's fees incurred after the offer was made. If an offer is accepted, either party may file the offer and notice of acceptance with the court and then, "[t]he clerk must then enter judgment."

That mandatory ("must enter a judgment") language, and the understanding expressed by many courts and practitioners that a FLSA settlement requires judicial or DOL approval to determine whether it is fair and reasonable, was the subject of the recent opinion in *Mei Xing Yu v. Hasaki*. In that case, the district court had determined that parties "may not evade the requirement for judicial (or DOL) approval." The district court then certified its opinion for review by the Second Circuit. The Court of Appeals agreed to hear not only from the parties but also the DOL, which advocated for requiring judicial approval of FLSA settlements even where an offer of judgment was accepted.

The Court of Appeals compared the long-understood proposition that FLSA claims require judicial or DOL approval with other types of claims where judicial approval is necessary. By way of example, the False Claims Act makes clear in the statute itself that a *qui tam* action may be dismissed only "if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." By contrast, the Court noted, the FLSA itself contains no express requirement for court approval prior to a dismissal or settlement. Although the FLSA contains no statutory mandate for approval of settlements, the U.S. Supreme Court had long ago concluded that FLSA claims could not be waived in private settlements without judicial or DOL approval.

The Second Circuit's decision does not wholly upend the conventional wisdom that FLSA settlements require DOL or court approval. Instead, the Court distinguished between such secret settlements and the mechanism in Rule 68(a) which mandates that offers of judgment be part of a public filing. Although the Second Circuit's decision controls only law in federal courts in New York, Vermont and Connecticut, it is likely to impact the thinking of practitioners defending FLSA claims elsewhere.

If you have any questions or would like more information on this topic, please contact Jon Rabin at jrabin@hallrender.com or (248) 457-7835 or your regular Hall Render attorney.

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