Insight

IN-DEPTH DISCUSSION

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Second Circuit Holds that Parties May Not Stipulate to Dismiss With Prejudice FLSA Actions Without Court Approval

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A recent decision by the Second Circuit will likely make it more difficult for parties to enter into private Fair Labor Standards Act (FLSA) settlements in cases pending not only in the Second Circuit, but nationwide. On August 7, 2015, in Cheeks v. Freeport Pancake House, Inc., No. 14-299, the Second Circuit held that parties may not stipulate to dismiss an FLSA action with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), without court approval, "even if the parties want to take their chances that their settlement will not be" enforced in future litigation.

Stipulating to dismiss an FLSA action with prejudice in connection with a settlement, without seeking judicial approval, is an option that some parties wish to pursue, even if it means that their release is not guaranteed enforcement in a subsequent lawsuit, for a variety of reasons. Many district courts across the country have refused to allow this practice and have insisted that parties justify the settlement underlying the stipulation of dismissal even when the parties were not seeking judicial approval that would provide them with a binding release. In Lynn's Food Stores, Inc. v. U.S. Department of Labor,[1] the Eleventh Circuit held that in order for a private settlement of an FLSA to be enforceable, either a district court or the Department of Labor must first determine that the proposed settlement "is a fair and reasonable resolution of a bona fide dispute over FLSA provisions."

Until the Second Circuit's decision in Cheeks, no federal circuit court of appeals had addressed the propriety of the practice of filing a stipulation of dismissal with prejudice without first seeking judicial approval. Indeed, there has been some recent indication that appellate courts might loosen, rather than tighten, the requirements for enforceable private settlements of FLSA claims. The Fifth Circuit's 2012 decision in Martin v. Spring Break '83 Prods., LLC,[2] suggested that some courts might take a more lenient approach to private FLSA settlements under appropriate circumstances. In Martin, the Fifth Circuit enforced a private agreement between a union and an employer to settle employees' FLSA claims that did not have court or DOL approval, as it was satisfied that a "bona fide dispute" existed and the employees were represented by counsel. After the Cheeks decision, however, not only will the option of stipulating to dismiss FLSA cases with

1 679 F.2d 1350 (11th Cir. 1982).

2 688 F.3d 247 (5th Cir. 2012).

prejudice absent court approval no longer be allowed in the Second Circuit, but approval of FLSA settlements themselves may become more difficult in the Second Circuit.

In Cheeks, both parties argued they should be allowed to stipulate to dismiss with prejudice FLSA cases without court approval, and so the Second Circuit sought the DOL's view on the issue. The agency's position, unsurprisingly, was that the FLSA fell within the "applicable federal statute" exception to Rule 41, such that court approval was required. Noting that there was conflicting district court authority within the Second Circuit, the appellate court ultimately sided with the line of authority that was concerned that "low wage employees" might be "more susceptible to coercion or more likely to accept unreasonable, discounted settlement offers quickly," which, it stated, was contrary to the purposes of the FLSA. As a result, it held that "Rule 41(a)(1)(A)(ii) stipulated dismissals settling FLSA claims with prejudice require the approval of the district court or the DOL to take effect."

Significantly, the Second Circuit expressly stated that it was not opining on whether parties may settle such cases without court approval or DOL supervision by entering into a Rule 41(a)(1)(A) stipulation without prejudice, leaving the option still on the table for now. However, such an option is understandably less appealing to employers because of the potential lack of finality associated with such a resolution.

It also bears noting that at the end of its opinion, the court discussed the "basis on which district courts recently rejected several proposed FLSA settlements" because, it stated, this reasoning "highlights the potential for abuse in such settlements and underscores why judicial approval in the FLSA setting is necessary." Among the provisions that the court highlighted were (1) "highly restrictive confidentiality provisions," (2) "an overbroad release that would waive practically every possible claim against the defendants, including unknown claims and claims that have no relationship whatsoever to wage and hour issues" and (3) provisions that would provide for fees for plaintiffs' counsel between "40 and 43.6 percent of the total settlement payment" without adequate documentation to support such a payment.

The Second Circuit also called out a provision that had been rejected by other district courts in the circuit "which contained a pledge by plaintiff's attorney not to represent any person bringing similar claims against Defendants," because it "raised the specter of defendants settling FLSA claims with plaintiffs, perhaps at a premium, in order to avoid a collective action or individual lawsuits from other employees whose rights have been similarly violated."

The arguably paternalistic interpretation of the FLSA in the Second Circuit's opinion is summed up by the last sentence, which contends that, under the FLSA, there remains a "need for employee protections, even where the employees are represented by counsel." It therefore seems likely that approval of FLSA settlements may be more difficult in the Second Circuit going forward, and there may be closer examination or rejection of broad releases that go beyond wage and hour claims, and even less acceptance of confidentiality provisions in FLSA settlements.

It is also possible that the Second Circuit's holding may spread to other circuits and further limit the option of settling FLSA cases through stipulations of dismissal with prejudice. Indeed, in the days since Cheeks has been issued, there have already been reports of district courts outside of the Second Circuit adopting the Cheeks rationale, including a district court in the Fourth Circuit that refused to allow the parties to stipulate to dismiss with prejudice a case where the settlement included claims under the Equal Pay Act (EPA), due to the fact that the EPA statute is contained within part of the FLSA. It is therefore important to consider the impact of the Cheeks decision before entering into and structuring settlements in pending litigation both inside and outside the Second Circuit.