



Discovery In FLSA Cases May Soon Hit The Fast-Track

Insights

1.31.18

Early discovery in cases brought under the Fair Labor Standards Act (“FLSA”) may be changing significantly if courts begin to adopt the new *Initial Discovery Protocols For Fair Labor Standards Act Cases Not Plead As Collective Actions*. The Federal Judicial Center’s FLSA Protocols Committee, which includes judges as well as lawyers engaged in FLSA matters, has developed discovery protocols that seek to change a party’s initial disclosure requirements to include additional documents and information specifically relevant to FLSA cases.

For example, plaintiffs are asked to produce all documents they have related to their pay and work hours, all information about any wage complaints they made while employed, a copy of sworn statements they have obtained, documents they intend to rely upon, a calculation of their purported damages, the dates for which they claim FLSA violations occurred, and other detailed information about their claim. Defendants also must provide information, including the plaintiff’s time and pay records, all documents related to any complaints made by the plaintiffs, sworn statements, offer letters and/or employment agreements, job descriptions, FLSA and/or wage policies applicable to the claim, relevant information about insurance, and other information related to the defenses to the claim.

These disclosure obligations track a party’s initial disclosure requirements, which means they should be produced within 30 days after an answer or motion is filed. The protocols also call for an interim protective order over the information, at least until the parties can negotiate a formal protective order during discovery.

The Bottom Line

The discovery protocols are simply recommendations and are not applicable to any case unless a judge (or district court) adopts them. Having said that, the Federal Judicial Center’s employment-case discovery protocols have been adopted by several judges and district courts, so it is possible that these protocols will be adopted around the country in the coming years.

In the meantime, these FLSA discovery protocols serve as a good reminder to make sure your record retention obligations are being met, and that you can promptly access employee’s pay and time

information should it be needed for litigation.

Related People



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