2nd Circuit Decision Paves the Way for Streamlined FLSA Offers of Judgment

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In a much-anticipated decision, a federal appeals court just ruled that Fair Labor Standards Act (FLSA) claims resolved through Rule 68(a) offers of judgment do not require fairness review and judicial approval. The 2nd Circuit Court of Appeals' December 6, 2019 decision is a critical ruling for employers seeking to resolve lawsuits filed under federal wage and hour law, providing a much clearer path for resolution (*Yu v. Hasaki Restaurant, Inc*).

The plaintiff in the case, Mei Xing Yu, filed a complaint against her employer, Hasaki Restaurant, alleging violations of the FLSA overtime provisions. In response, Hasaki sent Yu an offer of judgment, pursuant to Rule 68(a) of the Federal Rules of Civil Procedure, for $20,000 plus attorneys' fees. Yu accepted the offer, and the parties then filed the offer and notice of acceptance with the district court. Before the clerk entered the judgment, as was technically required under the plain terms of Rule 68(a), the district court ordered the parties to provide the settlement agreement for a fairness review and judicial approval. Both Yu and Hasaki disagreed that such a step was required, prompting an appeal to the 2nd Circuit.

On appeal, the 2nd Circuit reversed the trial court. It found no judicial approval requirement in the text of the FLSA. The appeals court also declined to read a judicial approval requirement into the statute. Key to its latter determination was its review of Supreme Court precedent, which led the panel to conclude that there is a fundamental difference between stipulated judgments under Rule 68(a) and private settlements.

The court explained that "the act of filing suit, airing the parties' dirty laundry in public and before a judge, *and then* coming to an agreement distinguishes stipulated judgments from private, back-room compromises that could easily result in exploitation of the worker and the release of his or her rights." Also important was the court declining to extend its 2015 holding in *Cheeks v. Freeport Pancake House, Inc.*, which held that judicial approval for stipulated dismissals of FLSA claims with prejudice was required under Rule 41(a)(1)(A)(ii). The court explained that *Cheeks* was "limited" to Rule 41(a)(1)(A)(ii) dismissals with prejudice and did not address "other avenues for dismissal or settlement of claims," including Rule 68(a) offers of judgment.

So what does this mean? If you are confronted with a lawsuit under the FLSA within the 2nd Circuit (New York, Connecticut and Vermont), you now have the ability to resolve your claim without formal court approval by offering judgment. Nevertheless, if you are faced with an FLSA claim, you may

court approval by offering judgment. Nevertheless, if you are faced with an FLSA claim, you may want to think twice about having a judgment entered against you as it could have unintended consequences.

The *Yu* decision also appears to suggest that the 2nd Circuit may relax its view of court approval on wage and hour settlements beyond the Rule 68(a) context. With the continued uptick of wage and hour litigation and the heavy burden on the federal courts' dockets, it remains to be seen whether courts will continue to insist on judicial approval of FLSA settlements.

For questions regarding wage and hour compliance or litigation, please contact your Fisher Phillips attorney or any attorney in our Wage and Hour Practice Group.

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