Beware Draconian USDOL Settlement Terms

Insights
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The scope of potential punishments in federal Fair Labor Standards Act lawsuits brought by the U.S. Labor Department apparently is being limited only by the imaginations of its lawyers. A recent consent judgment against an operator of residential-care facilities for developmentally disabled adults suggests that employers should not be surprised by unorthodox USDOL settlement demands.

The court order agreed to in *Solis v. Jasmine Hall Care Homes* contained terms requiring the defendants to pay $850,000, to comply with the FLSA in the future, to accept particular interpretations of relevant FLSA principles, and to produce upon demand whatever documents USDOL decides to "request". These provisions are within the reasonable parameters of FLSA enforcement.

Beyond The Pale

However, a provision entitled, "Surrender of License Upon Adjudicated Violation" obligates Jasmine Hall and its owners to "surrender their care home operating license if any of them or any entity they own or control is adjudicated in a final, enforceable judgment to be in violation of any state or federal minimum wage or overtime law . . . in any proceeding before a state or federal court or any state or federal administrative tribunal . . .." Moreover, the provision says that "[USDOL] may intervene and participate in any proceeding in which Defendants' licensing status is at issue . . . so that it may raise any wage and hour concerns or objections that it may have."

This is remarkable for a number of reasons, including that:

◊ Nothing in the FLSA calls for or so much as even contemplates compelling an employer essentially to go out of business as a remedial measure;

◊ A triggering violation will not be limited to one involving the FLSA but could instead arise under a state law as to which USDOL has no enforcement authority whatsoever;

◊ Presumably, license surrender will be necessary no matter how trivial, arcane, isolated, or unintentional a violation might be; and

◊ USDOL is prepared to insert itself into future state- or local-level license proceedings to "raise" unspecified varieties of "wage and hour concerns or objections" without any express limitation to those involving laws USDOL enforces, or indeed to any particular laws at all.

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Of course, the defendants need not have agreed to this provision. They could have chosen instead to litigate into the indefinite future to an uncertain conclusion against an opponent with essentially unlimited resources.

What Might The Future Hold?

If USDOL settlement demands are to be unconstrained by the remedies provided for in the FLSA, then any number of interesting conditions could be in the offing. For instance, might another ultimatum require:

◊ An employer to seat a USDOL-specified representative on its Board of Directors?

◊ A resignation from or the termination of one or more management members?

◊ The forced divestiture of an individual's ownership interest in a business?

At some point, USDOL's proposed terms could become so harsh, oppressive, and disconnected from the FLSA that simply letting the lawsuit move forward to an expeditious ruling on the merits might be a preferable alternative.