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Second Circuit Requires Court-Approval of All FLSA Settlements

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Settlement of wage and hour actions just got harder in New York, Connecticut, and Vermont. On August 7, 2015, in *Cheeks v. Freeport Pancake House*, Inc., the United States Court of Appeals for the Second Circuit, which covers New York, Connecticut, and Vermont, issued a decision that prevents parties from stipulating to the dismissal of a case in which there are claims alleging violations of the Fair Labor Standards Act ("FLSA"). Generally, when parties settle a federal court action, they simply file a stipulation that dismisses the case with prejudice. By filing such a stipulation, the parties do not have to provide the court with a copy of their settlement agreement and the terms of any such agreement can remain private and confidential. In *Cheeks*, the Second Circuit held that parties cannot dismiss FLSA cases by stipulation and instead the parties must submit their settlement agreement to the District Court for review so that the District Court can determine whether the settlement is fair and equitable.

In *Cheeks*, the plaintiff, Dorian Cheeks, had worked for the defendant, Freeport Pancake House, Inc., as a restaurant server and manager. In August 2012, she filed a complaint in the United States District Court for the Eastern District of New York alleging that Freeport Pancake House did not properly pay her overtime in violation of the FLSA and New York Labor Law. Plaintiff sought to recover overtime wages, liquidated damages, attorneys' fees, and costs. The complaint was filed as a single-plaintiff action; it was not filed as a class or collective action.

During discovery, the parties privately settled the matter. They submitted a stipulation of dismissal with prejudice to the District Court. However, the District Court rejected the stipulation holding that the parties could not agree to a private settlement of an FLSA claim absent court or U.S. Department of Labor approval. As such, the District Court directed the parties to file a copy of the settlement agreement on the public docket and explain to the court why the settlement was fair and reasonable. The parties refused and instead appealed the District Court's ruling to the Second Circuit.

The Second Circuit in *Cheeks* had to address whether the FLSA permits parties to dismiss lawsuits by stipulation. The Second Circuit acknowledged that the FLSA itself was silent on the issue as were the Federal Rules of Civil Procedure. The Second Circuit also conceded that neither the Supreme Court nor any Circuit Court had ever addressed the issue. However, the Second Circuit noted that in two cases from the 1940s, the Supreme Court held that employees could not generally waive their rights. Further, the Second Circuit stated that an Eleventh Circuit decision from 1982, which has been widely followed, held that employees could only settle claims under the FLSA if there was a bona fide dispute and the settlement was overseen by a court or the Department of Labor.

The Second Circuit then reviewed the underlying policy considerations of the FLSA and the rationale used by the Supreme Court and the Eleventh Circuit in reaching their decisions. According to the Second Circuit, the FLSA has unique policy considerations and goals, namely to protect low-wage employees with unequal bargaining power who are more susceptible to coercion and more apt to accept unreasonable, discounted settlements. Thus, the Second Circuit held that the FLSA is different from all other employment statutes.

In fact, the Second Circuit noted that many District Courts had rejected FLSA settlements because of such alleged coercion and abuse. Examples that the Second Circuit cited include "a battery of highly restrictive confidentiality provisions," overly broad release provisions that would waive all possible claims against the defendants including claims that have no relationship to wage and hour issues, and attorneys' fees provisions that allow plaintiffs' attorneys to recover a substantial percentage of the recovery. Accordingly, the Second Circuit held that parties cannot dismiss FLSA cases with prejudice pursuant to stipulation. Instead, they must submit their settlement agreements to the District Court for review.

After *Cheeks*, FLSA cases within the Second Circuit will be more difficult to resolve for a number of reasons. First, no matter how frivolous the allegations, parties will no longer be able to quickly resolve their differences if the plaintiff alleges a violation of the FLSA. Instead they will have to submit their settlement to a court for its approval. This would be required even if the defendant has not appeared in the action because the settlement was reached before the defendant responded to the complaint.

Second, it will be very difficult to make any FLSA settlement confidential. One of the main provisions that most defendants seek in resolving any lawsuit, including an FLSA lawsuit, is that the settlement will be confidential. Currently, when a District Court reviews a settlement agreement, the agreement is placed on the public docket. If parties are now going to be required to submit their FLSA settlements to a court for approval, in most cases, the settlement agreement will be on the public docket where anyone can review its terms. This will nullify any confidentiality provisions contained in FLSA settlements.

Third, in holding that FLSA cases cannot be dismissed by stipulation, the Second Circuit noted that there have been "abuses" in FLSA settlement agreements. Among the "abuses" noted by the Second Circuit are overly broad releases that go beyond wage and hour matters. This is a significant problem for defendants. The Second Circuit clearly disapproved of general releases contained in FLSA settlements. Thus, defendants now risk courts rejecting settlement agreements because they contain general releases; and if a settlement agreement contains a release limited to wage and hour matters only, defendants risk paying a settlement and having the plaintiff file a claim for non-wage and hour violations. Thus, defendants will not have security that once the settlement is finalized all issues between the parties will be resolved.

Cheeks is a problematic decision for employers as it will make it harder to resolve FLSA claims. Because courts will scrutinize FLSA settlement agreements before they will dismiss an FLSA case, defendant-employers will find it difficult to include confidentiality and other provisions in an agreement that are normally contained in settlement agreements. Further, defendant-employers run the risk of settling an FLSA case and exposing themselves to other lawsuits. As such, employers must be vigilant in ensuring their continued compliance with the FLSA.

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