

# Reminder – Be Careful When Settling A Wage Claim

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Addressing an issue that the Second Circuit had not explicitly touched before, the court just held that parties cannot privately resolve and/or discontinue an FLSA claim, without the supervision of the DOL or court approval. *Cheeks v. Freeport Pancake House, Inc.*, 2015 WL 466 4283 (2d Cir. 2015)

In rejecting a stipulation presented by two parties, who had agreed to discontinue a FLSA action, the court held that “the FLSA is distinct from all other employment statutes...” and even if represented by counsel,... “plaintiffs face extenuating economic and social circumstances and lack equal bargaining power...”

Hence, the court held that any stipulated dismissal of an FLSA claim requires approval of a court or the DOL to be effective.

The court also noted that these are certain types of provisions which a court may object to, such as:

- “highly restrictive confidentiality provisions; or
- a “pledge by plaintiff’s attorney not to represent any person bringing suit or class action against Defendant...”

## Where does that leave employers?

- This decision confirms that you generally cannot just “settle” an FLSA claim, or a claim for unpaid wages or overtime, directly with an employee, or recognize that if you do, the settlement may not be enforceable, in that it may not preclude a later lawsuit.
- Such a settlement will be a particularly suspect if the employee does not have an attorney.
- Much to the frustration of many of our clients, the decision further confirms that an employer cannot, in a settlement agreement, bar plaintiff’s counsel from suing you again. ***So, yes, the same lawyer can settle one claim and then seek new “plaintiffs” among your employees, and go after you once more!***
- Any time you resolve a wage complaint, you should attempt to be “fair” in the settlement. In other words, calculate the wages owed and settle for an amount which comes close to (or goes over) what you believe the real liability is. So, if that same employee attacks the settlement later, you can prove it was a “fair” resolution of the claim.
- Finally, whether it is a legal document or a simple agreement, make sure that the “settlement” document includes a statement affirming that this represents payment for “all hours worked” by the employee. That will be helpful if there is later litigation.