

PUBLICATION

An Offer You Should Refuse: Eleventh Circuit Says No to Private Settlements of FLSA Claims

Authors: Jennifer G. Hall

August 15, 2013

With a fact pattern exemplifying the need for protection of employees under the Fair Labor Standards Act (FLSA), the Eleventh Circuit has held that former employees may only settle their FLSA claim 1) under the supervision of the Secretary of Labor, or 2) through a lawsuit by the employee directly against the employer. If by lawsuit, however, any proposed settlement must be presented to the district court, and the district court must enter a "stipulated judgment after scrutinizing the settlement for fairness" – the same process used for current employees. *Nall v. Mal-Motels, Inc.*, No 12-13528 (11th Cir. July 29, 2013).

In this case, Candace Nall worked for Mal-Motels, Inc. from 2005 to 2006 and again starting in 2008 as a front desk clerk and night auditor. When she returned to work in 2008, she used a time clock to track her hours worked; but in December 2008, the owner of Mal-Motels, Mohammad Malik, allegedly instructed Nall to not use the time clock. Instead, he would pay her a "salary" of \$8.75 per hour. From that point forward, Nall verbally reported her hours worked to Malik, he called in her hours to a payroll company, and the payroll company issued a check. There were "no accurate written records of the hours that Nall actually worked," which is an FLSA violation. Nall also worked more than 40 hours per workweek but was not paid one and one-half times her regular hourly rate, which is an additional FLSA violation. Nall contended that Mal-Motel owed her at least \$3,780 in unpaid overtime plus an additional \$3,780 in liquidated damages for a total of \$7,560.

Nall quit her job in February 2010 because she was not being paid overtime. She obtained an attorney, and her attorney filed a lawsuit on March 29, 2010. Malik, without the assistance of an attorney, filed an answer on behalf of Mal-Motels. The answer was stricken and a default entered because Malik, a non-attorney, could not represent the corporation in the lawsuit.

Then, in May 2010, Malik called Nall directly and requested that they meet at the motel to discuss the lawsuit. Malik told Nall not to bring her attorney. At the meeting, Malik presented Nall with two documents to sign, but would not allow her to read them. In exchange for signing the documents and dismissing her lawsuit, Malik offered Nall a check for \$1,000 and another \$1,000 or \$2,000 in cash. Nall agreed to sign the two documents because she "was homeless at the time and needed money."

The two documents Nall signed were a voluntary dismissal with prejudice, and a letter to Nall's attorney informing him that the case had been settled. On June 2, 2010, the voluntary dismissal was filed; however, on June 8, 2010, by the Court's own motion, the Court entered an order "stating that because Nall's complaint had been filed by an attorney and she had not received permission to appear without that attorney, her pro se voluntary dismissal with prejudice 'has no effect and [the complaint] remains pending.'"

Malik hired an attorney who had the default set aside and who filed a motion to enforce settlement. The magistrate judge held a hearing on the motion to enforce settlement. At the hearing, there was conflicting testimony as to the number of overtime hours worked. Additionally, Nall's attorney objected to Court approval of the settlement, contending that the terms were not fair or reasonable. Despite his objection, the magistrate judge recommended that the motion to enforce settlement be granted, and the district court adopted the

magistrate judge's report, overruled Nall's objections, and dismissed the complaint with prejudice. Nall appealed to the Eleventh Circuit.

Noting "there are often great inequalities in bargaining power between employers and employees," the Eleventh Circuit held that FLSA claims by former employees require Court approval and a "stipulated judgment." Specifically, "[e]nsuring that each FLSA plaintiff receives the damages, including liquidated damages, to which she is statutorily entitled is no less important when the plaintiff is a former employee." Moreover, the "district court should not have granted the opposed motion to approve and enforce the settlement agreement." The case was remanded to the district court for further proceedings.

Lessons Learned:

1. Employers should be represented by counsel in FLSA actions, as most courts require corporations and limited liability companies to be represented by attorneys.
2. If an employee is represented by an attorney, all settlement negotiations should be handled through the attorney, not the employee.
3. Be sure to obtain court approval of proposed FLSA settlements for both current and former employees.
4. Hourly employees rarely, if ever, are exempt from minimum wage and overtime. As such, use a time clock and pay the requisite overtime to avoid FLSA liability.