

PUBLICATION

Man-to-Man Defense Clears Court: Early Judgment Offers Will Satisfy Named Plaintiff's Claims...For Now

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In its recent decision in *Genesis Healthcare Corp. v. Symczyk*, the U.S. Supreme Court aided employer efforts to "pick off" named plaintiffs in collective actions for unpaid wages brought under the Fair Labor Standards Act (FLSA) with early offers of judgment that would satisfy only the named plaintiff's individual claims.

The majority decision, authored by Justice Clarence Thomas, held that an FLSA lawsuit must be dismissed once a named plaintiff's claim is mooted through an offer of judgment prior to the opting-in of other collective action plaintiffs. In *Symczyk*, Laura Symczyk, a former hourly employee, claimed that she was owed \$7,500 in unpaid wages because Genesis automatically deducted time for 30-minute meal breaks, even when she worked during those breaks. What's more, Symczyk claimed that Genesis made the same improper deductions on the paychecks of many of its employees. For that reason, Symczyk brought her claims as a collective action, on behalf of herself and similarly-situated employees.

Genesis sought to avoid certification of a class of aggrieved employees by making Symczyk an offer of judgment, by which it agreed to have a judgment entered against it for the \$7,500 that Symczyk claimed as damages, plus her court costs and attorney's fees. Genesis extended this offer when it filed its answer, before any "opt in" notices were sent to other employees. Symczyk ignored the offer. Genesis responded that even though its offer had not been accepted, the case was now moot because it had offered Symczyk all of the relief she sought, such that no actual controversy existed between the parties. The district court agreed and dismissed the complaint.

On appeal, the Third Circuit rejected the employer's tactic, holding that such a move would "frustrate the objectives served by [the FLSA]." The Supreme Court disagreed. The Court found that it was irrelevant whether Symczyk characterized her case as brought by an individual or a collective group: "The mere presence of collective-action allegations in the complaint cannot save the suit from mootness once the individual claim is satisfied."

In reaching its conclusion, the majority neatly sidestepped the more fundamental question of whether Symczyk's unaccepted offer of judgment truly rendered her claims moot in the first place, finding that she had not properly raised this issue on appeal. Indeed, in her dissent, Justice Kagan argued that the majority opinion will have no practical impact on future cases because a plaintiff who has rejected or ignored an offer of judgment still maintains an individual interest in the case, and thus that plaintiff's claims are not moot.

For that reason, until the Supreme Court rules on that question, it will be up to the lower courts to determine the true scope of the *Symczyk* holding. In the meantime, we expect savvy plaintiffs' counsel to seek to evade the holding's outcome by seeking non-monetary relief or unspecified monetary damages, or by lining up multiple named plaintiffs before filing suit.

If you have questions about how this decision could affect your company, please contact any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.

