

FLSA Settlements: Is the Tide Turning on the Requirement of Court Approval?

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That understanding has been adopted by most courts nationwide for decades. Some critics have observed that this has effectively made wage and hour litigation more difficult, costly, and complicated to litigate and resolve, as it increases judicial involvement in settlement details, may disturb or unwind arm's-length settlement negotiations, and often requires parties to make terms of settlement (most notably, settlement amounts) a matter of public record.

However, there have been some courts that have disagreed with the prevailing review. One of the most notable decisions dissenting from this prevailing view came in 2012, when the Fifth Circuit Court of Appeals held court approval was not necessary to render the private FLSA settlement before it binding and enforceable.

These instances of disagreement only appear to be increasing. A pair of recent examples are worth noting. On July 12, 2022, in *Alcantara v. Duran Landscaping, Inc.*, U.S. District Judge Joshua D. Wolson of United States District Court for the Eastern District of Pennsylvania flatly rejected the notion that the FLSA requires court approval of settlements based on a review of its text.

From the outset of the opinion, Judge Wolson did not mince words about his view on requiring court approval: "Ronald Reagan described the nine most terrifying words in the English language: 'I'm from the Government, and I'm here to help.'" After additional commentary and legal analysis, Judge Wolson concluded "while [FLSA] settlements do not need to be approved, there is nothing that prevents the Court from approving a settlement if the Parties request it."

While the opinion is not binding on any other courts, this was an especially significant holding, given that the United States Department of Labor had filed an amicus brief in the case advocating for the requirement of court approval.

In another recent example, U.S. District Judge Benjamin Beaton of the United States District Court for the Western District of Kentucky issued an opinion in *Askew v. Inter-Continental Hotels Corp.* on August 8, 2022 that also held court approval of FLSA settlements is not necessary.

Like Judge Wolson in *Alcantara*, Judge Beaton looked to Federal Rule of Civil Procedure 41(a)(1)(A)--a rule which authorizes plaintiffs to voluntarily dismiss their claims without court order, subject to certain exceptions--to conclude that the FLSA is not an applicable exception. In other words, because the text of the FLSA contains no express requirement for court approval, an FLSA plaintiff may invoke Rule 41(a)(1)(A) to dismiss his or her claim per a settlement without a court approval order.

At the end of his opinion, Judge Beaton even questioned the court's ability to get involved in review and approval of FLSA settlements: "[a]bsent legal authority inviting the Court's intervention in a private settlement...the Court may not write its own ticket." Because all plaintiffs signaled their desire to dismiss the litigation, the action stood "dismissed--whether the Court likes it or not."

These two decisions--while not binding on other courts--are welcome developments in the wage and hour space for employers, if not all litigants, as it gives back to the parties in dispute more power to control the trajectory of litigation and to determine what terms are necessary for resolution.

But only time will tell whether and how many other courts adopt the reasoning of *Alcantara* and *Askew*. Continue to check back here for more coverage of developments. And, as always, do not hesitate to reach out to a member of our Labor & Employment Team with any of your wage and hour needs.