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NATIONAL LAW REVIEW

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## Pre-Litigation FLSA Settlements Don't Require Court or DOL Approval, New York Federal Court Holds

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Wednesday, August 9, 2017

In a case of first impression in the Second Circuit, a court in the U.S. District Court for the Southern District of New York has held private settlements under the FLSA entered into prior to a lawsuit being filed *do not* require approval by either the Department of Labor or a court.

In *Gaughan v. Rubenstein*, 2017 U.S. Dist. LEXIS 107042 (S.D.N.Y. July 11, 2017), the plaintiff filed FLSA and state law claims against her former employer seeking unpaid wages and liquidated damages, despite having settled these same claims long before filing suit. On the employer's motion to dismiss, the plaintiff argued that the settlement was not binding because it was never approved by the Department of Labor or a court, citing *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2nd Cir. 2015), a recent case from the Second Circuit holding that parties may not simply file a stipulation of dismissal with prejudice in a pending FLSA case without either DOL or court approval. Distinguishing *Cheeks*, the district court held Federal Rule of Civil Procedure 41, applicable to voluntary case dismissals, was not at issue when a FLSA dispute is settled before the relevant litigation is filed; rather, it applies only to settlements reached during the pendency of an existing case.

The Second Circuit has not ruled on whether pre-litigation settlements can be binding in the absence of DOL or court approval and courts in other jurisdictions are split: The Fifth Circuit Court of Appeals has held a pre-litigation settlement may be valid and binding where it is the result of a "*bona fide* FLSA dispute over hours worked or compensation owed" (as opposed to a non-FLSA settlement that merely contains a general waiver and release provision encompassing FLSA claims), *Martin v. Spring Break '83 Productions, LLC*, 688 F.3d 247 (5th Cir. 2012), while the Eleventh Circuit has reached the opposite conclusion. *Lynn's Food Stores, Inc. v. U.S. Department of Labor*, 679 F.2d 1350 (11th Cir. 1982). Distinguishing the oppressive, "one-sided bargaining" that occurred in *Lynn's Food Stores*, the court in *Gaughan* concluded that to require DOL or court approval "given the procedural and substantive indicia of fairness present here[] would inhibit productive settlements," and that "it would effectively require that any parties, even ably counseled plaintiffs, wishing to settle an FLSA dispute out-of-court without bringing suit, obtain judicial or agency approval for their settlement," circumstances that the district court found unpalatable and unnecessary.

Should the plaintiff ultimately appeal, a Second Circuit decision furthers a circuit split regardless of its holding and sets up a potential Supreme Court resolution.

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