

The Benefits of Settling Employee Wage Claims Through the Department of Labor

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The Fair Labor Standards Act (FLSA), as construed by the U.S. Department of Labor (DOL) in its extensive regulations promulgated under the Act, governs federal wage and hour law. Where an employer is an enterprise engaged in interstate commerce, or other grounds for FLSA coverage exist, it must pay a minimum wage and overtime compensation, absent an applicable exemption. DOL has an enforcement role under the FLSA in that Congress granted it authority to audit employer compliance and investigate claims made by employees. DOL investigation and/or audit is typically followed by a settlement demand from that agency. Employers are often conflicted about whether to settle through the DOL or fight the agency or employee in court. This is particularly true when the employer feels DOL is overreaching or just plain wrong. There are often such feelings when the claim in question involves an alleged overtime violation, due to the complexity of applicable regulations. Of course, there are pros and cons to every settlement. Sometimes, choosing to accept a DOL settlement offer is simply a business decision. The law is actually written to encourage employers to make this business decision to settle, and resolve the matter early and at a “discount.” Before 1949, employers feared settling wage claims with employees. Courts had held releases for unpaid compensation void as against public policy and lacking in consideration. As a result, employers feared that employees would collect settlements, then file suits for liquidated damages (here an amount equal to the unpaid wages or overtime) and attorneys’ fees. In 1949, Congress added a waiver provision to 29 U.S.C. § 216(c), the penalties section of the FLSA. The waiver provision of section 216(c) permits the DOL to supervise the payment of unpaid wages owed to any employee and the agreement of any employee to accept such payment. Upon payment in full, the employee waives his or her right to wages, overtime, and liquidated damages. The waiver provision was intended to give an “incentive” (*Lynn’s Food Store, Inc. v. U.S.*, 679 F.2d 1350, 1353 n.6 (11th Cir. 1982)) to employers to settle wage claims supervised by the DOL. After the 1949 amendments, when an employee agrees to accept a payment that the DOL determines is due and owing and the employer pays in full, the employer can feel confident that it will not later be sued for liquidated

damages and attorney's fees. Congress explained: One of the principal effects of the committee proposal will be to assure employers who pay back wages in full under the supervision of the Wage and Hour Division that they need not worry about the possibility of suits for liquidated damages and attorney's fees.... [The proposal] ... 'is essential to the equitable enforcement of the provisions of the act and that it should be welcomed by fair-minded employers who wish to make restitution for perhaps unwitting violations of the act by encouraging them to do so in such a manner to insure that their liability will be limited to the amount of wages due.' See S.Rep. No. 640, 81st Congress, 1st Sess., reprinted in (1949) U.S. Code Cong. Serv. 2249 (quoting report of the House Committee on Education and Labor). If no voluntary agreement is reached following a DOL investigation, all bets are off and DOL or the employee(s) can sue the employer to recover unpaid wages, overtime, liquidated damages, and attorneys' fees. In addition, DOL may seek application of a three-year statute of limitations as to the alleged FLSA violation. While at the administrative stage, where the agency is negotiating a settlement before filing a lawsuit, it will typically only assert a two-year statute of limitations. That is the "discount" for the employer, an early settlement out of court where it escapes paying liquidated damages, a potential third year of liability, and employee and employer attorneys' fees. Under these circumstances, employers clearly should give serious consideration to settling wage and hour claims with DOL. The alternative, accepting the risk of an employee suit by an aggressive plaintiffs' lawyer seeking far greater damages and fees, is generally an unattractive option. However, negotiations with DOL can be difficult too. Despite the law permitting DOL to collect "just" wages, in practice that agency has pressed employers to settle unpaid wages or overtime *and* to pay liquidated damages, even though applicable law only authorizes the DOL to collect wages and overtime. Armed with this information about their legal rights, employers have greater negotiating strength in resolving matters based on collection of only the overtime compensation due under the FLSA, or at least a deep discount on liquidated damages.

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