

Employment Law Update: Avoiding Attorneys Fees in a Wage and Hour Lawsuit

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Employers should be aware that the Eleventh Circuit issued a significant decision last month that provides employers with an opportunity to moot a plaintiff's lawsuit under the Fair Labor and Standards Act prior to entry of a judgment and avoid paying attorneys' fees and costs.

In *Dionne v. Floormasters Enterprises, Inc.*, Case No.: 09-15405, 2011 WL 3189770 (11th Cir. July 28, 2011), the court held that when an employer makes full payment to an FLSA plaintiff, the action is mooted and, because no judgment is entered in favor of the plaintiff, the employer is not required to pay the plaintiff's attorneys' fees and costs.

The Facts of the Case

As detailed in the court's opinion, Dionne was employed by Floormasters Enterprises, Inc. ("Floormasters") from September 19, 2007 until November 27, 2007 as a warehouse clerk. On March 24, 2008, Dionne filed a complaint under the FLSA in a Florida district court on his own behalf and on behalf of other warehouse clerks who had worked for Floormasters within the preceding three years to recover overtime compensation, liquidated damages, and reasonable attorney's fees and costs.

During the course of the litigation, Floormasters offered to tender the entire amount of Dionne's alleged overtime claim to resolve the matter, although the employer still denying any overtime was owed. Floormasters subsequently argued that its tender of the entire amount of alleged overtime mooted Plaintiff's case, and it should be dismissed. Dionne accepted the offer and agreed to dismiss the case, but still sought to collect his attorneys' fees under Section 216(b) of the FLSA, which awards costs and fees to the prevailing party.

Floormasters opposed the motion on the basis that Dionne was not entitled to an award of attorneys' fees and costs because no judgment had been awarded to Dionne in the action and, therefore, he was not the prevailing party. The district court agreed and denied Dionne's motion for attorneys' fees and costs. The Eleventh Circuit affirmed.

The Court's Decision

The court stated that the FLSA plainly requires that the plaintiff receive a judgment in his favor to be entitled to attorney's fees and costs, which does not occur when an action is mooted at any point prior to entry of that judgment. The Eleventh Circuit further confirmed

that an employer is able to render an FLSA action moot by tendering the full amount claimed by the plaintiff in back wages and liquidated damages.

The Message for Employers

By using the procedure outlined in *Dionne*, employers can avoid the payment of attorneys' fees and costs in FLSA actions. Given the growing number of wage and hour cases, this decision is one employers facing FLSA need to be mindful of and represents a huge victory for employers.

The [Law Office of Beth Lincow Cole](#) is committed to helping employers comply with federal and state employment law and avoid potential business-wrecking lawsuits. If your company is concerned about how FLSA overtime regulations may impact your policies and procedures and wants to address them before the DOL comes knocking, [contact](#) employment law attorney [Beth Lincow Cole](#).



About Beth Lincow Cole

The Law Office of Beth Lincow Cole is committed to helping employers comply with federal and state employment law and avoid potential business-wrecking lawsuits. If your company needs employee or management training or assistance in drafting, reviewing, or revising its EEOC/discrimination policies, [contact](#) employment law attorney [Beth Lincow Cole](#).