FORD & HARRISON LLP
THE RIGHT RESPONSE AT THE RIGHT TIME
LEGAL ALERT

Legal Alert: Eleventh Circuit Issues Important New Decision on Attorneys' Fees in FLSA Lawsuits

7/29/2011

Executive Summary: According to a new decision by the U.S. Court of Appeals for the Eleventh Circuit, employers can avoid paying attorneys' fees in FLSA cases by, before judgment, paying the plaintiff(s) all wages claimed, plus an equal amount as liquidated damages. *Dionne v. Floormasters Enters.*, 2011 U.S. App. Lexis 15560 (11th Cir. July 28, 2011). ***Background*** In *Dionne*, the plaintiff sued Floormasters, claiming the company failed to pay him overtime as required by the federal Fair Labor Standards Act (FLSA). Dionne submitted an affidavit in this case, estimating that his unpaid wages were $1,500. Floormasters tendered a check for $3,000 – the amount claimed as unpaid wages plus an equal amount as liquidated damages – and moved for dismissal arguing that the offer mooted Dionne's claim thereby depriving the court of subject matter jurisdiction. The trial court granted the motion and dismissed the case with prejudice, reserving jurisdiction to consider a motion for attorneys' fees and costs. Dionne moved for attorneys' fees and costs under Section 216(b) of the FLSA, which makes fee awards mandatory for prevailing plaintiffs. Floormasters argued that Dionne was not entitled to attorneys' fees or costs because no judgment had been entered in his favor. The trial court agreed, and the Eleventh Circuit affirmed. According to the Eleventh Circuit: (1) entry of judgment in favor of the plaintiff is a necessary predicate to an award of attorneys' fees under the FLSA; (2) an FLSA case is rendered moot by payment of the full amount claimed by the plaintiff in back wages, plus liquidated damages; (3) dismissal based on mootness is not the equivalent of a judgment in favor of the plaintiff; and, therefore (4) a plaintiff in an FLSA case mooted by full payment of the claim is not entitled to an award of attorneys' fees under Section 216(b). ***Impact of Decision*** Floormasters tendered payment less than two months after Dionne filed his lawsuit, but the Eleventh Circuit's reasoning seems equally applicable if the payment is made later, perhaps even while a jury is considering a case. Tender of payment in full at that stage would moot the case just as in *Dionne*, and therefore should result in a dismissal with prejudice. This case could be an important step toward turning back the onslaught of FLSA cases brought by plaintiffs' lawyers. Of course, employers don't always have the benefit of an affidavit specifying the amount of a plaintiff's claim, but in most cases the employer should be able to obtain that information in discovery. While it is difficult to generalize about what a judge may do, courts should be sympathetic to an argument that an employer is entitled to learn in discovery the full amount a plaintiff will claim at trial, even if there are no clear records of hours worked. In fact, some courts require that both plaintiffs and defendants provide early disclosure in FLSA cases concerning hours worked, wages claimed and other information

necessary for calculating back pay allegedly owed. With that information, an employer will have what it needs to evaluate whether to moot a case with an offer of full relief. The *Dionne* decision is also interesting because Dionne brought the case as a collective action. There is a split of authority on whether a defendant can moot an FLSA collective action by offering full relief only to the named plaintiffs and others formally joined as plaintiffs, without also providing for payments to putative class members. Some courts have held that doing so is inconsistent with the policies behind the FLSA, while others have held that an offer of full relief to the plaintiff(s) deprives the court of jurisdiction despite the existence of other putative plaintiffs. The Eleventh Circuit has not squarely addressed this issue. There is no indication that the issue was raised on appeal in *Dionne*, and perhaps the outcome would have been different if notices of consent to join or a motion to certify the case as a collective action had been filed. Nonetheless, the fact that the court agreed that the proffer of full relief to the named plaintiff mooted the case and made no mention of concern for putative plaintiffs suggests that the Eleventh Circuit might follow those courts that have allowed defendants to moot collective actions by offering full relief only to those formally joined. It may also be noteworthy that the Eleventh Circuit's decision was written by a judge from the Ninth Circuit, sitting by designation. The case may therefore have significant persuasive value in courts within the Ninth Circuit.

Employers' Bottom Line: The Eleventh Circuit's decision may make it easier for employers to resolve FLSA claims without the risk of being required to pay the plaintiffs' attorneys' fees, which in many cases exceed the amount of unpaid wages allegedly owed. If you have any questions regarding the issues discussed in this Alert, please contact the author, Shane Muñoz, a partner in our Tampa office, at smunoz@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.