

Fifth Circuit Continues to Permit Wage Claim Waivers in Private Settlements, But Only Where a Bona Fide Dispute Exists

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A Federal Appeals Court recently confirmed that under certain circumstances, parties may privately settle and release claims under the Fair Labor Standards Act. A generic release contained in a settlement agreement won't do it; instead, the parties must cite to a bona fide dispute regarding wages in the settlement agreement. But this decision extends only to the borders of the Fifth Circuit, which encompasses Texas, Louisiana and Mississippi. Most other circuit courts would not enforce such releases unless they were the product of an agreement supervised by a court or the Department of Labor.

Former Employees Sue for Overtime After Reaching Settlement Agreement Releasing OT Claims

In [Bodle v. TXL Mortgage Corp.](#), a company and its former employees were embroiled in a state court action concerning the former employees' non-compete agreements. The company and the former employees resolved the dispute through a private settlement agreement. The settlement agreement contained the following release:

In exchange for the consideration identified above, DEFENDANTS hereby fully and completely release and discharge [the Company] and its agents, representatives, attorneys, successors, and assigns from any and all actual or potential claims, demands, actions, causes of action, and liabilities of any kind or nature, whether known or unknown, including but not limited to all claims and causes of action that were or could have been asserted in the Lawsuit and all claims and causes of action related to or in any way arising from DEFENDANTS' employment with [the Company], whether based in tort, contract (express or implied), warranty, deceptive trade practices, or any federal, state or local law, statute, or regulation. This is meant to be, and shall be construed as, a broad release.

On the same day that the former employees settled the non-compete dispute in state court however, they filed suit in federal court against the company and its president asserting violations of the FLSA for failing to pay them overtime. The federal district court dismissed the case holding that the release barred them from pursuing those claims.

Certain Releases of Wage Claims Permitted, but Fifth Circuit Refuses to Enforce Release Under Circumstances Here

On appeal the Fifth Circuit Court of Appeals recognized the general rule that FLSA claims cannot be waived unless a settlement is supervised by a court or the Department of Labor. But it reaffirmed an earlier holding that it applies an exception to this rule: if there exists a “bona fide dispute” between the parties concerning hours worked or compensation owed.

The Fifth Circuit refused to enforce the release here because there was insufficient evidence of a “bona fide dispute.” It reasoned that the state court action concerned the validity of restrictive covenants between the former employees and the company; not wage and hour claims and although the parties apparently had some discussion about unpaid commissions in settlement negotiations concerning the state court action, these discussions did not address overtime compensation or even reference the FLSA. Thus, because there was “no factual development of the number of unpaid overtime hours or the compensation due for unpaid overtime,” the generic release contained in the state court settlement agreement could not extend to the former employees’ FLSA claims.

Key Takeaways

Though the Bodle holding is circumscribed by its facts and jurisdictional reach, the case provides some important reminders for companies and wage-and-hour practitioners alike.

- In the Fifth Circuit (Texas, Louisiana and Mississippi), settlements agreements involving disputes implicating FLSA claims should, at a minimum specifically reference enough information in the settlement agreement to frame the existence (and settlement of) a bona fide dispute concerning hours worked or compensation owed.
- Because waiver of FLSA claims is the exception, rather than the rule, the typical kitchen-sink release (i.e. “all claims . . .”), included as a catch-all or fail-safe in settlement agreements between companies and former employees, is unlikely to provide protection against FLSA claims. Thus careful drafting, while always critical, is absolutely imperative to effectuate a valid waiver of FLSA claims.
- Relatedly, to ensure there is a record of a “bona fide dispute” concerning hours worked or compensation owed, company human resources professionals and managers should appropriately document employee concerns from the outset of any dispute.
- Counsel and companies should pay close to attention to the developments in this thorny area of the wage and hour compliance and litigation in order to ensure that settlement agreements provide the finality, predictability and risk management benefits that they are designed to effectuate.
- Employers operating outside of the Fifth Circuit likely cannot take advantage of the “bona fide” dispute exception – their courts require a court or DOL-supervised settlement in order to release a wage claim.

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