

## Second Circuit to Decide Whether Court Approval of FLSA Settlements Applies to Accepted Offers of Judgment

Article By:

Noel P. Tripp

Felice B. Ekelman

---

Seeking to resolve a split among the district courts in the Second Circuit, the Court of Appeals has accepted an interlocutory appeal to decide whether, in resolving cases involving FLSA claims, offers of judgment under Rule 68 require DOL or judicial scrutiny and approval. *Yu v. Hasaki Restaurant, Inc.*, 2017 U.S. App. LEXIS 20698 (2nd Cir. Oct. 23, 2017).

In 2015 the Second Circuit, adopting the position taken decades ago by the Eleventh Circuit in *Lynn's Food Stores, Inc. v. U.S. Department of Labor*, 679 F.2d 1350 (11th Cir. 1982), held that dismissal with prejudice, pursuant to FRCP 41, of a pending FLSA lawsuit requires review and approval by either the DOL or a court. *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2nd Cir. 2015). Federal Rule of Civil Procedure 68, however, provides that if at least 14 days before trial, a defendant offers to resolve a case by having a judgment taken against it in the proposed amount and the plaintiff accepts the offer, “[t]he clerk must then enter judgment” against the defendant. If the plaintiff rejects the offer of judgment and later loses the case, or obtains a judgment for less than what the defendant offered, the plaintiff must pay any costs the defendant incurred after making the offer.

Since the *Cheeks* decision, district courts in the Second Circuit facing potential FLSA settlements have been split over whether Rule 68 provides a procedural workaround to the *Cheeks* requirement that FLSA settlements be approved by the DOL or a court. The Court of Appeals’ decision in *Yu* should provide some clarity in this foggy area.

Jackson Lewis P.C. © 2025

---

National Law Review, Volume VII, Number 297

Source URL: <https://natlawreview.com/article/second-circuit-to-decide-whether-court-approval-flsa-settlements-applies-to-accepted>