

## Publication

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04/22/2020

### U.S. Supreme Court Bars Plaintiff from Pursuing FLSA “Collective Action” For Unpaid Wages, After Being Offered Payment on Her Individual Claim

Wage-and-hour “collective action” lawsuits brought by employees under the Fair Labor Standards Act (“FLSA”) have become a source of massive concern for employers over the last several years, and with good reason. These FLSA collective action lawsuits enable a single employee to file a claim on behalf of not only herself, but also all other “similarly situated” employees, thereby drastically increasing both the scope of potential liability and litigation costs for employers targeted with such claims. Just this week, in *Genesis Healthcare Corp. v. Symczyk*, the Supreme Court – in a sharply-divided 5-4 decision – issued an employer-friendly decision in this arena. Specifically, the court weighed in on the hotly-contested question of whether a defendant-employer’s offer to fully remedy the named-plaintiff’s alleged FLSA damages can moot that plaintiff’s claim and, by extension, result in dismissal of the “collective action” claims in the lawsuit. Plaintiffs’ counsel have objected strenuously to such a defense strategy, on the grounds that employers should not be permitted to moot the large-scale collective action allegations by “picking off” the individually-named plaintiffs. In *Genesis Healthcare*, the Supreme Court rejected that concern, and held that once the named plaintiff’s claim is mooted by an offer of judgment, the case is subject to dismissal, without ever reaching the sweeping “collective action” allegations.

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The plaintiff in *Genesis Healthcare*, a nurse, filed suit against her former employer on behalf of herself and all similarly situated employees at the company, claiming that Genesis had violated the FLSA by automatically deducting pay for 30-minute meal breaks, even when employees had spent those breaks performing compensable work. In response, the company promptly served an “Offer of Judgment” upon her, as permitted under Rule 68 of the Federal Rules of Civil Procedure, which provides the mechanism for Defendants to tender formal settlement/judgment proposals during litigation. Genesis’ Offer of Judgment would have given the plaintiff full relief, including \$7,500 in compensation for her alleged unpaid wages, as well as payment of her reasonable attorneys’ fees and costs. The plaintiff failed to accept the company’s offer within the designated 10-day window, and received no money from the company as a result. Nonetheless, the company contended that because it had offered the plaintiff complete relief on her FLSA claim, she no longer possessed a personal stake in the lawsuit which might permit her to proceed with her claims. The company argued that the plaintiff’s claims were thus moot, and as a result, the collective action claims which she had asserted were rendered moot – and subject to dismissal – as well.

The Supreme Court agreed. First, it pointed out that the underlying trial and appellate courts already had ruled that the plaintiff’s individual claim was moot based on the unaccepted offer, and that the plaintiff had conceded that point for purposes of her case. Thus, the Supreme Court never broached the underlying issue of whether, in fact, the *unaccepted* Offer of Judgment should be deemed to moot the plaintiff’s individual FLSA claim for damages. Building upon the assumption that the plaintiff’s own personal claim had been mooted, the Court then addressed the impact on the “collective action” allegations which the plaintiff had asserted in the lawsuit. The Court held that because the plaintiff’s individual claim was mooted, the company’s offer also



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had the effect of eradicating any personal interest the plaintiff had in representing *others* in a collective action under the FLSA. The Court explained: “the mere presence of collective-action allegations in [a plaintiff’s FLSA complaint] cannot save the suit from mootness once the individual claim is satisfied.” As a result, the Supreme Court ruled that the lawsuit was properly dismissed in its entirety.

In a scathing opinion, the dissenting Justices in *Genesis Healthcare* criticized the majority for issuing a ruling which should be deemed (in the dissent’s view) as inapplicable to any future cases. Specifically, the dissent explained its view that an unaccepted Offer of Judgment should not, in fact, moot the named plaintiff’s FLSA claim. The dissent therefore asserted that the *Genesis Healthcare* ruling is based on a “fallacy as its premise,” because the majority opinion had “address[ed] an issue predicated on that misconception [about unaccepted offers], in a way that aids no one, now or ever.” In sum, the dissent argued – as plaintiffs’ counsel surely will do in future cases – that a defendant-employer cannot moot a “collective action” lawsuit simply by offering relief to the individually-named plaintiff(s), particularly where that offer is not accepted.

As it stands now, the Supreme Court’s *Genesis Healthcare* decision presents employers with an opportunity to avoid collective action lawsuits brought under the FLSA – a statute that has been notoriously difficult for employers to navigate, particularly with respect to its overtime and employee classification provisions – by offering individual plaintiffs full relief for their claims early on in the litigation. Of course, the decision whether to make such an offer will be case-specific, taking into account the nature of the claims, the likelihood that other individuals would “replace” the originally-named plaintiff(s) whose claims might be mooted, and other such considerations. To be sure, however, such offers now must continue to be



considered as a viable weapon in employers' defense arsenal. Indeed, plaintiffs' attorneys will be hard-pressed to decline such offers, for fear of forfeiting monies that may be due to their initial/named clients, while risking that those claims (and attorneys' fees) could be mooted in the process. While the impact of the *Genesis Healthcare* decision on wage-and-hour claims undoubtedly will be the subject of further litigation, the ruling serves as a positive development for employers to combat costly FLSA collective action lawsuits in their early stages.

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If you have any questions regarding this alert, please contact William J. Tarnow, Chair of Neal Gerber Eisenberg's Labor & Employment Practice Group, or any other member of the group for more information.