

INSIGHTS

Supreme Court Allows Fifth Circuit Ruling on Private FLSA Settlements to Stand

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On December 10, 2012, the United States Supreme Court declined to review a recent ruling of the Fifth Circuit Court of Appeals, which approved a private settlement of employees' claims for unpaid overtime under the Fair Labor Standards Act (FLSA).

The plaintiffs, who requested the Supreme Court hear an appeal of the Fifth Circuit's decision, alleged there was a circuit split on this issue, citing an opinion from the Eleventh Circuit Court of Appeals requiring approval of any FLSA settlement from a court or the United States Department of Labor.

Given the Supreme Court's denial of review, employers in the Fifth Circuit – which includes Texas, Louisiana, and Mississippi – now have the option to privately settle disputed claims under the FLSA. Before the Fifth Circuit's ruling, many employers and employment attorneys believed private FLSA settlements were unenforceable.

For any such private settlement to be valid, however, three elements should be present:

1. a genuine dispute regarding the compensation owed to the employee;
2. the employee must be aware of his or her rights under the FLSA; and
3. there must be little danger of the employee being disadvantaged by unequal bargaining power.

The third factor can be satisfied when the employee is represented by an attorney or a union; even a suggestion to consult with an attorney may suffice.

For more information on the ruling and how it impacts your business, please contact [Robert Sheeder](#).