FLSA Ruling Shows Split Over Court Approval Of Settlements

By **James P. Looby and Allie Czerniak** (March 7, 2025)

On Jan. 10, in Bazemore v. Papa John's USA Inc., a Kentucky federal judge **held** that neither the Fair Labor Standards Act, nor binding precedent in the U.S. Court of Appeals for the Sixth Circuit, "requires or authorizes district court approval of FLSA collective-action settlements."[1]

James P. Looby

Allie Czerniak

The Bazemore decision highlights a building trend of courts across the country finding that they are not required, or even authorized, to approve private settlements releasing FLSA claims.

Whether such FLSA releases require court approval to be valid and enforceable is the subject of a growing jurisdictional split that the U.S. Supreme Court will likely need to resolve.

Case Background

Andrew Bazemore filed suit against Papa John's USA Inc. and Papa John's International Inc. in the U.S. District Court for the Western District of Kentucky, alleging that the pizza chain's reimbursement formula caused drivers like Bazemore to be paid less than the minimum wage.

The two-count complaint stated an FLSA collective action claim and a Rule 23 class action claim under the Kentucky Wages and Hours Act in Kentucky Revised Statutes Chapter 337.010.

Seven individuals later filed consent to join forms, pursuant to Title 29 of the U.S. Code, Section 216(b), prior to any court rulings regarding class or collective certification.

During the course of the Bazemore suit, a related wage and hour class action — Durling v. Papa John's International Inc. — **resolved** in the U.S. District Court for the Southern District of New York. Bazemore and the seven opt-in plaintiffs opted out of that settlement so they could separately pursue their claims in the Kentucky suit.

The parties ultimately **agreed to settle** the Kentucky lawsuit for a total settlement of $140,000, of which $38,000 would be split among Bazemore and the seven opt-in plaintiffs on a pro rata basis.

For Bazemore, the settlement included a full general release of claims. For the opt-in plaintiffs, the settlement released all claims relating to or arising out of their work for Papa John's.

The settlement stated it would only become final and effective upon court approval, among other things. Bazemore subsequently filed an unopposed motion with the court, seeking final approval of the settlement and dismissal with prejudice. The district court denied Bazemore's unopposed

motion.

The court noted that "there is no clear statutory directive or precedential guidance from the Supreme Court or this Circuit's Court of Appeals for district courts to approve FLSA collective action settlements."[2]

Taking the analysis a step further, the court concluded that not only was its approval of a private settlement involving FLSA claims not required, but also that courts lack authority to provide such approval. Instead, it found that the settlement and dismissal of the complaint was governed by the "standard voluntary-dismissal procedure found in Rule 41(a)(1)(A)."[3]

Whether FLSA Settlements Require Court Approval

In Lynn's Food Stores Inc. v. United States, the seminal 1982 case, the U.S. Court of Appeals for the Eleventh Circuit held that there are only two ways an employee can settle or compromise claims for back wages under the FLSA.

The first is under the supervision of the U.S. Department of Labor secretary. The second is through court approval of a settlement "after scrutinizing the settlement for fairness," and through the court's entry of a stipulated judgment resolving litigation between an employee and an employer.[4]

Since then, courts across the country — including the U.S. Court of Appeals for the Second Circuit, in its 2015 ruling in Cheeks v. Freeport Pancake House Inc. — have routinely relied upon Lynn's Food to require judicial review and approval of FLSA settlements.[5]

The Bazemore court, however, explicitly rejected the holding of Lynn's Food. Bazemore follows the reasoning of Gilstrap v. Sushinati LLC, a 2024 decision out of the U.S. District Court for the Southern District of Ohio, in which the court similarly held that judicial approval of FLSA settlements is neither required nor allowed, regardless of whether the parties jointly request it.[6]

Bazemore and Gilstrap join a growing number of courts in the Sixth Circuit and elsewhere that have declined to follow Lynn's Food, holding instead that judicial review of FLSA settlements is neither necessary nor permitted.[7]

Other courts fall somewhere along the spectrum between Bazemore and Lynn's Food — or even beyond.

For example, in a 2012 decision in Martin v. Spring Break '83 Productions LLC, the U.S. Court of Appeals for the Fifth Circuit held that parties may privately settle an FLSA claim involving a bona fide dispute as to hours worked or compensation due.[8]

In Barbee v. Big River Steel LLC in 2019, the U.S. Court of Appeals for the Eighth Circuit held that judicial approval is not required for settled attorney fees in FLSA matters, but it avoided taking

sides on whether judicial approval is required for FLSA settlements, generally.[9]

In Walton v. United Consumers Club Inc. in 1986, the U.S. Court of Appeals for the Seventh Circuit suggested, in dicta, that the FLSA prohibits "wholly private settlements,"[10] prompting district courts within that circuit to routinely review and approve FLSA settlements and releases, consistent with Lynn's Food.[11]

And still, some courts have gone well beyond Lynn's Food and imposed stringent preapproval requirements, such as requiring conditional certification and giving opt-in plaintiffs an opportunity to object before approving a settlement of FLSA claims on a collective-wide basis.[12]

As Bazemore illustrates, these divergent lines of authority have caused courts within the same circuit, and even within the same district, to reach inconsistent conclusions about whether court approval is required for FLSA settlements — and if so, what must occur first.[13]

Other Complicating Factors

In addition to jurisdictional considerations, the shifting landscape surrounding judicial approval of FLSA settlement agreements presents various other open issues with which practitioners may need to grapple, as we will discuss below.

Parties may face challenges in enforcing a release of FLSA claims, depending on the presiding court.

One can imagine a scenario in which parties settle a lawsuit with a release of FLSA claims where judicial approval is barred. However, the employer later seeks to enforce the release before a court that requires approval in order for an FLSA release to be valid.

It is unclear whether the reviewing court would uphold the release in isolation, perform its own independent review of the entire settlement or simply find the release invalid — even if the employer satisfied its settlement obligations and otherwise complied with the law of the jurisdiction where the original lawsuit was resolved.

One avenue parties frequently pursue in lieu of settlement approval from the courts or the Department of Labor — or after a court has granted a motion to compel arbitration — is to pursue arbitrator approval.

Employers may consider this approach in other situations, given the growing uncertainty around the enforceability of FLSA releases, as an arbitrator's approval may provide some level of coverage in the event of a future dispute.[14]

The validity of such approval, however, is not guaranteed. Indeed, if a reviewing court finds that the facts of the case render such approval an advisory opinion, as noted in Gilstrap, the court could choose to disregard the arbitrator's approval based on Article III of the U.S. Constitution.[15]

The claims in a complaint may affect whether a court will review and approve a settlement releasing FLSA claims.

The same alleged wage and hour violation, e.g., unpaid overtime arising from a miscalculation of an employee's regular pay rate, can often be contemporaneously pursued under both the FLSA and state law.

However, for a variety of reasons, plaintiffs may include only an FLSA claim or only a state law claim in their complaint, even if both have merit. Accordingly, employers typically seek a release of any claims that could conceivably be brought under the same facts or theory of liability.

Rule 23 of the Federal Rules of Civil Procedure requires court approval of any class settlement of state law claims. Likewise, various state law claims cannot be released through private settlement agreements without court oversight and approval.

For example, relying on the rationale of Lynn's Food, Illinois courts have held that private settlements and releases of claims under the Illinois Minimum Wage Law and the Illinois Wage Payment and Collection Act are void as a matter of law.[16]

If litigation is being resolved on a Rule 23 basis, then judicial review and approval of the class settlement is required, and the FLSA release may receive any necessary approval in connection with the court's overall review.

Bazemore and similar decisions, nevertheless, have left unanswered whether judicial review is appropriate or permitted when a settlement agreement covers both FLSA and state law claims, but the case is not being resolved on a classwide basis.[17]

Relatedly, following the analysis in Bazemore, a court could seemingly find jurisdiction to review a settlement if a state law claim — requiring judicial approval to release — is pleaded in the complaint, but could decline to review the agreement if the complaint only includes an FLSA claim. In either situation, whether the releases are ultimately enforceable may, again, depend on the jurisdiction in which the employer seeks to enforce them.

To account for these issues, employers could request — as part of settlement discussions — that plaintiffs amend the operative complaint to add an FLSA or corresponding state law claim. Doing so may resolve some of the concerns expressed in Bazemore, but even this approach may not be enough. For instance, a court may not permit the amendment or the employees may have already released the prospective claim in another matter.

There are also important practical considerations in choosing whether to settle a case on an FLSA collectivewide basis, a Rule 23 basis or both. If either party is only willing to settle a case on an FLSA collectivewide basis, amending the complaint to include a state law claim may not cure the underlying issue.

The enforceability of FLSA releases in other situations remains open to interpretation.

Courts on both sides of this growing split have differentiated between FLSA releases obtained in connection with a bona fide dispute, and those included in other privately negotiated agreements.

In the first instance, a plaintiff has raised a claim with the employer — even if informally — alleging a wage-related claim. The latter may occur, for example, as part of a routine severance or separation agreement when no wage-related issues were ever discussed.

Although Gilstrap hints at the possibility that some privately negotiated FLSA releases may be enforceable,[18] courts that are unwilling to review FLSA releases typically frame their position around the parties having a bona fide dispute.

Accordingly, employers cannot assume that a court that is unwilling to review and approve an FLSA release in connection with a bona fide dispute will separately enforce an FLSA release obtained in a different scenario.

Conclusion

The Bazemore decision highlights a growing judicial trend toward allowing private settlements and releases of FLSA claims, absent court approval. The legal landscape, however, presently presents a myriad of often contradictory approaches to when — and how — FLSA claims may be released.

Ultimately, the Supreme Court will need to weigh in. But in the meantime, counsel must be cognizant of the views of their particular jurisdiction when negotiating and entering into agreements purporting to release FLSA claims.

James P. Looby is a shareholder and Allie Czerniak is an associate at Vedder Price PC.

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[1] Bazemore v. Papa John's USA Inc., 3:22-cv-00311-RGJ-CHL, Docket No. 71 at 4 (W.D. Ky. Jan. 10, 2025).

[2] Id. at 3.

[3] Id. at 4.

[4] Lynn's Food Stores Inc. v. United States, 679 F.2d 1350, 1352-53 (11th Cir. 1982) (citing 29

U.S.C. § 216(b)-(c).)

[5] See, e.g., Cheeks v. Freeport Pancake House Inc., 796 F.3d 199, 206 (2nd Cir. 2015) (holding that "Rule 41(a)(1)(A)(ii) stipulated dismissals settling FLSA claims with prejudice require the approval of the district court or the DOL to take effect"); see also Gilstrap v. Sushinati LLC, 734 F. Supp. 3d 710, 719 (S.D. Ohio 2024) ("[C]ourts across the country have cited this aspect of Lynn's Food Stores more than 4,000 times.").

[6] Gilstrap, 734 F. Supp. 3d at 717, 721.

[7] See also, e.g., Walker v. Marathon Petroleum Corp., 684 F. Supp. 3d 408, 414 (W.D. Pa. 2023) (holding there is "no legal support and no particularly sound reason" for requiring judicial approval of private-party FLSA settlement).

[8] Martin v. Spring Break '83 Prods. LLC, 688 F.3d 247, 255-57 (5th Cir. 2012)

[9] Barbee v. Big River Steel LLC, 927 F.3d 1024, 1027 (8th Cir. 2019).

[10] Walton v. United Consumers Club Inc., 786 F.2d 303, 306 (7th Cir. 1986);

[11] See, e.g., Brooks v. Sherman Phoenix LLC, 2021 WL 977071, at *1 (E.D. Wis. Mar. 16, 2021).

[12] Garvey v. SM Energy Co., 2024 WL 4866551, at *2-3 (D. Colo. Nov. 22, 2024).

[13] Compare Bazemore, Docket No. 71 at 3-4, with Pitty v. Contrad's Laserwash Co., 2023 WL 7166917, at *1 (N.D. Ohio, Oct. 31, 2023) (citing approvingly to Lynn's Food and stating that "[d]istrict courts within the Sixth Circuit routinely require court approval of FLSA settlements, even when such settlements involve individual (as opposed to collective) claims"), and Jackson v. Johnson, 1:23-cv-00074-JRH-BKE, Docket No. 18 (S.D. Ga. Aug. 21, 2024) (denying parties' renewed motion for settlement approval, despite parties having cured most of the perceived flaws in the initial settlement agreement, because court found attorneys' fees unreasonable).

[14] See, e.g., Emrith v. iMobile LLC, 2023 WL 6292646, at *2 (E.D.N.Y. Sept. 27, 2023).

[15] See Gilstrap, 734 F. Supp. 3d at 722-24.

[16] See Lewis v. Giordano's Enters. Inc., 397 Ill. App. 3d 581, 595 (2009).

[17] See Bazemore, Docket No. 71 at 3-4 ("Plaintiffs often file collective-action claims and class-action claims together, as Bazemore did here. When such claims settle together, the parties might ask the district court to approve their settlement entirely rath than the class-action dispute alone. The Sixth Circuit has acknowledged but never endorsed that approach. Furthermore, because this case's collective action plaintiffs dropped their class-action claims before the Court certified any putative class, this Court need not reach the question... ." (citations omitted)).

[18] Gilstrap, 734 F. Supp. 3d at 718 n.5.