

Nontraditional settlement

A different approach to resolving wage and hour class actions

Wage and hour laws are expansive and often difficult to follow. Once an employer realizes he or she is involved in a class action wage and hour case, it's often too late to do anything, leading to large settlements and a stunned organization.

A recent ruling by a California appellate court, left unchanged by the California Supreme Court, gives employers a possible means for minimizing exposure to wage and hour class actions. The case, *Chindarah v. Pick Up Stix*, held that an employer may resolve an employee's wage claim at a compromised amount, if there is a bona fide dispute as to whether the wage is due.

"While this decision is favorable for employers and upholds the most basic tenets of freedom of contract and the policy of encouraging voluntary settlements, employers should proceed with caution when attempting to enter into direct settlements with employees," says Peter B. Maretz, a shareholder with Shea Stokes Roberts & Wagner, the firm of record for Pick Up Stix in that litigation.

Smart Business spoke to Maretz about this important tool to be considered in trying to resolve wage and hour class actions.

What were the particulars of the Chindarah case?

Chindarah v. Pick up Stix concerned California Labor Code section 206.5, which prohibits agreements purporting to release claims for wages concededly due. Pick Up Stix had been sued in a putative class action alleging it had improperly classified its general managers and assistant general managers as exempt from overtime pay. After efforts to resolve the litigation through normal facilitated mediation with opposing counsel failed, Pick Up Stix decided to make offers directly to the unnamed class members — its employees. Pick Up Stix provided each affected employee with copies of the lawsuit, letters from plaintiffs' counsel describing the claims, as well as a proposed release agreement. The amount offered to each employee depended upon different factors, but the offers were less than what plaintiffs' counsel alleged each class member was



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due in unpaid wages. Ultimately, the vast majority of the putative class of employees — current and former — accepted Pick Up Stix's settlement offers and signed release agreements, thereby eliminating the potential for class certification.

By signing the release agreements, the putative class members agreed to release all claims for unpaid wages and agreed not to participate in any class action that may include any of the released claims. In addition, they each acknowledged they spent more than 50 percent of their workday performing managerial duties, a key factor in determining whether they were properly classified.

Following the settlement, eight of the putative class members who accepted Pick Up Stix's settlement offer and signed release agreements joined the misclassification lawsuit against Pick Up Stix, alleging that the release agreements they signed were not enforceable under Section 206.5(a) of the Labor Code. Pick Up Stix successfully enforced the releases at the trial court level by showing a bona fide dispute existed as to whether wages were due to any putative class member.

In affirming the trial court, the Court

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of Appeals recognized the restaurant did not withhold wages concededly owed and that it had consistently maintained that plaintiffs' exempt classification was appropriate, demonstrating a bona fide dispute. The court also agreed that California law should not prohibit the settlement of a claim when no wages are concededly due and where a bona fide dispute exists as to the claims alleged. In so holding, the court rejected the plaintiffs' contention that the Labor Code precludes the settlement of all wage claims, disputed or not.

Finding support in the legislative history of section 206.5 and several federal court cases applying California law, the court affirmed the trial court ruling that the releases legally settled a bona fide dispute over whether the restaurant had properly classified the managers. Had the outcome been different, employers would have lost an important tool in negotiating settlements of disputed claims.

What can employers learn from this case and subsequent ruling?

When this case began, Pick Up Stix carefully researched and analyzed the steps required to reach the settlements with plaintiffs. It proceeded with great caution to make sure that employees were fully informed of the claims being asserted against the restaurant, understood the terms of the settlement, and knew that their acceptance of the settlement offer would preclude them from pursuing or participating in a lawsuit against the restaurant. Any attempt at settlement that lacked such a fair and honest approach might not warrant the same result.

To be sure, this approach will not work to settle every class action, and even where the approach is potentially effective, if not done right, it may not get the blessing of the court. If it is done right, however, it can be an incredibly effective tool to mitigate the financial burden of a wage and hour class action. <<