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Collective Action Cannot Proceed Where Representative Plaintiff's Claim Rendered Moot

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Today, the U.S. Supreme Court issued its ruling in *Genesis Healthcare Corp et al v. Symczyk*, No. 11-1059 (U.S. Supreme Court, April 16, 2013) , holding that the employee could not maintain a collective action once her individual claims were rendered moot.

In this case, the employee, who worked as a nurse at a Philadelphia hospital, claimed that she and others similarly situated were deprived of compensation when their employer automatically deducted 30 minutes of time worked per shift for meal breaks, even when the employees performed compensable work during those breaks. She claimed that the employer violated the Fair Labor Standards Act by engaging in such conduct.

The employer served upon the employee an offer of judgment under Federal Rules of Civil Procedure, Rule 68, which was sufficient to fully satisfy her individual claim. The employee did not respond, and the offer was effectively deemed withdrawn. The employer filed a motion to dismiss for lack of subject matter jurisdiction, arguing that they offered the employee complete relief, and therefore, she no longer had an individual stake in the outcome of the suit, thereby rendering the action moot. The district court agreed with the employer and dismissed the suit.

The employee appealed and the Third Circuit Court of Appeals reversed. The Court found that even though no other potential plaintiff opted into the suit, and even though the offer fully satisfied the plaintiff's claim, the collective action was not moot. This was because, according to the Court, calculated attempts by defendants to "pick off" named plaintiffs with strategic rule 68 offers *prior* to certification circumvented and frustrated the aims of the collective action process in the first place. The Court held that the employee should be allowed to seek conditional certification of the action. The employer sought review by the U.S. Supreme Court.

The high court agreed with the employer, finding that mootness principles control. Here, the employee's individual claim was rendered moot by virtue of the Rule 68 offer which provided complete satisfaction for her claim, and leaving her with no personal interest or stake in the collective action. Case law confirmed, and indeed, compelled this result. The Court rejected the employee's attempt to rely upon Rule 23 cases because class actions are fundamentally different from FLSA class actions and compel different results.

Employers who are faced with class and collective actions should consult with counsel to determine whether the methods for resolution will bring about the intended result, and to ensure that such endeavors will pass muster under the applicable state and federal rules.

For more information read *Genesis*.

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Topics

FLSA, Third Circuit Court Of Appeals, Collective Action, Meal Breaks