

WHAT EVERY EMPLOYER IN NEW YORK SHOULD KNOW ABOUT WAIVERS AND RELEASES RELATING TO EMPLOYEES' CLAIMS FOR UNPAID MINIMUM WAGES OR UNPAID OVERTIME COMPENSATION

When an employment dispute arises in the workplace, an employer will often seek to prevent future litigation by a former employee through the use of a waiver and release. Typically, an employer uses a waiver and release in two contexts. First, at the start of employment, an employee, in return for agreeing to a specific salary, will be asked to waive and release the employer from any and all claims for any liability arising from the employment or termination. Second, after being terminated from employment, an employer may wish to prevent a lawsuit and immediately settle with an employee who claims he/she has not been paid overtime or the minimum wage. When properly obtained, a waiver and release of liability is a valuable risk-management tool for employers.

In New York, employers attempting to incorporate a waiver and release of minimum wage and overtime claims as a condition to employment or as part of a settlement agreement must be mindful of the strict requirements and limitations imposed by the Fair Labor Standards Act (“FLSA”).

The FLSA is the federal law that establishes minimum wage, overtime pay, recordkeeping and child labor standards affecting full-time and part-time workers in the private and state and federal governmental sector. It limits when and how claims for both unpaid overtime and failure to pay the minimum wage can be settled.

Specifically, FLSA Section 216 (c)¹ provides:

The Secretary[of Labor] is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages.

Therefore, a valid waiver and release can be obtained under the FLSA only if the employee agrees to accept the payment which the Secretary of Labor determines to be due and thereafter full payment has been made. The FLSA does not permit an individual, without the supervision of the Department of Labor or a court, to waive his or her rights with respect to an employer’s failure to pay overtime or minimum wages. Simply put, enforcing individual waivers signed by employees without the proper oversight would “thwart the legislative policy the FLSA was designed to effectuate by enabling employers to utilize their superior bargaining power to circumvent the FLSA by means of individual waivers.” Simel v. JP Morgan Chase, 2007 WL 809689 (SDNY).

¹ 29 U.S.C. § 216 (c).