

## Court Rules That Payment Of Overtime Wages Pursuant To A Department Of Labor Audit Does Not Preclude Affected Employees From Pursuing Overtime Claims Under The FLSA

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Obtaining a valid waiver of minimum wage or overtime claims under the Fair Labor Standards Act (FLSA) continues to be tricky. Section 216(c) of the FLSA requires that a valid waiver must be “supervised” by the U.S.

Department of Labor (USDOL) or approved by a court after a lawsuit is filed.

In ***Adams v. ActionLink, LLC***, the U.S. Court of Appeals for the Eighth Circuit held that employees can proceed with their unpaid overtime claims even though they cashed a check from their employer stating that the check was for “full payment” of all wages owed as of the date of the check. In that case, the employer classified its brand managers as exempt from the FLSA's overtime requirements. During a USDOL investigation, the employer agreed to re-classify the employees as non-exempt and pay the employees back-pay to compensate them for unpaid overtime wages during the period of time they were classified as being exempt from the FLSA's overtime rules. The checks issued to these employees contained a statement stating that employees who cash the checks agree that they have received “full payment” for all minimum and overtime wages as of the date of the check. Employees who cashed these checks, as well as those who did not, sued the employer for damages under the FLSA, including overtime wages, liquidated damages and attorneys’ fees. The Eighth Circuit held that the language on the check was not sufficient to release the employees’ FLSA claims because it did not provide the employees proper notice of the rights

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that they were waiving under the FLSA, including the right to liquidated (or double) damages. The Eighth Circuit followed other federal appeal courts that have similarly held that similar releases are invalid. The Eighth Circuit also held that the employer could not rely on the USDOL investigation because the investigator did not approve the language, nor did the investigator approve the amounts paid by the employer until after the checks were issued. Although the Eighth Circuit declined to give the “magic words” needed for a valid waiver, it is clear that the mere payment of all alleged back wages is not sufficient to obtain a valid waiver of an FLSA claim.