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What Makes a Wage and Hour Attorneys' Fee Award "Reasonable"? A Multi-Factor Analysis from the Southern District of New York, White Plains Division

In a March 2023 decision arising out of a putative class and collective action under the Fair Labor Standards Act and New York Labor Law, Southern District of New York Judge Philip M. Halpern tackled the "reasonableness" of attorneys' fees awards in wage and hour settlements. Both statutes contain fee-shifting provisions and provide for an award of "reasonable attorney's fees" to prevailing plaintiffs. But what *is* a reasonable award? According to Judge Halpern and others in the Southern District, the answer is no more than one-third of the settlement absent exceptional circumstances. The plaintiffs' counsel's request for $295,000 in fees and costs from a total settlement of $445,000 was thus decidedly unreasonable.

The Case: *Ramirez v. Marriott International*

At the outset, Judge Halpern made clear that the party seeking payment carries the "burden of proving the reasonableness and the necessity of the hours spent and the rates charged." So, in a wage and hour case, a prevailing plaintiff must sufficiently demonstrate the reasonableness of their proposed attorneys' fees award. Such a demonstration can be made through the "presumptively reasonable" lodestar value, which is the product of multiplying the "reasonable hourly rate and reasonable hours required by the case." However, counsel must provide evidence laying out the "factual basis for the award." This evidence can take the form of contemporaneous time records that describe the nature of the work and the amount of time spent per timekeeper.

Even when that evidence is submitted, the court has the discretion to reduce the proposed fee award. Judge Halpern did exactly that in *Ramirez*, guided by Southern District case law, holding attorneys' fees should not exceed one-third of a wage and hour settlement.

First, Judge Halpern reduced the hourly rate for each category of timekeeper. Notably, Judge Halpern compared the hourly rates plaintiffs' counsel charged to the prevailing rates in the area for lawyers of comparable skill who performed similar work. Determining that the "low ends" of plaintiffs' counsel's rates far exceeded the "high ends" of reasonable rates, Judge Halpern applied the following rates: $500/hour for partners, $300/hour for counsel and associates, and $100/hour for non-attorney staff. By doing so, the lodestar value was drastically reduced from the proposed $650,928 to $243,765.

Next, Judge Halpern analyzed and reduced the lodestar on four grounds: (1) an excessive number of timekeepers; (2) duplicative hours; (3) block billing and vague entries; and (4) an excessive number of billed hours.

Judge Halpern took exceptional issue with plaintiffs' counsel's use of 41 timekeepers on a straightforward matter: two partners, 16 counsel/associates, and 23 non-attorney staff. Of course, the complexity of a case is important in determining the reasonableness of fees; but where a case is straightforward in nature, 41 timekeepers was an "indefensibly excessive and unreasonable" decision by plaintiffs' counsel. Even plaintiffs' counsel suggested that the hours of counsel/associates and non-staff attorneys who billed less than 10 hours should be removed from the calculation.

On duplicative hours, Judge Halpern noted that such an issue was an "obvious and unavoidable consequence" of overstaffing. As one example, six timekeepers logged 42 billing entries, 26.6 hours total, on drafting a "3.5-page letter about discovery deadlines." To address such duplication, "a further reduction…[was] warranted."

With respect to vague and block-billed hours, Judge Halpern expressed issues with these billing practices. In doing so, Judge Halpern recognized that block billing is not "per se prohibited" but can lead to difficulties regarding the reasonableness of fees when the block exceeds five hours. In terms of vagueness, such billing practice can have the effect of "precluding the Court from determining the reasonableness of any given entry." Judge Halpern pointed to "91 billing entries referenc[ing] 'emails' and 111 referenc[ing] 'correspondence,'" most of which lacked who the communications were with, and sometimes without stating the subject matter. As such, another reduction was appropriate.

Finally, Judge Halpern found the overall number of hours excessive. Counsel, an experienced labor law firm, spent 897.45 hours on a straightforward wage-and-hour case that involved two plaintiffs. That number of hours was unsupportable.

Ultimately, Judge Halpern reduced the lodestar value by 40%, resulting in a final fee award of $137,661 plus costs, or just under one-third of the total settlement amount.

Takeaway

Judge Halpern's analysis is an important reminder for counsel on both sides ofwage and hour cases in the Southern District of New York. While there is no bright line rule in the district, fee demands higher than one-third of the total settlement are highly disfavored and likely to be scrutinized (and reduced) by the court.