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Settlements

Dear Reader:

The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Settling FLSA cases can pose numerous traps for employers. Private settlements between employers and employees are not necessarily final. The statute provides that the Secretary of Labor "is authorized to supervise the payment of unpaid minimum wage or unpaid overtime compensation owing to any employee, and the agreement to accept such payment acts as a waiver by the employee of further rights upon payment in full." 29 U.S.C. § 216(c). Additionally, a settlement can be submitted to a court for stipulated judgment in a lawsuit.

In certain cases, the courts have rejected non-DOL supervised settlements. Lynn's Food Stores Inc. v. United States, 679 F.2nd 1350, 1352-54 (11th Cir. 1982). This fact makes it essential to obtain DOL supervision and blessing for any settlement of FLSA claims. Even where a settlement is rejected, the employer still may use the payments already made as a credit against potential FLSA liability. If an employer is unable, because of financial reasons, to make a full, lump-sum settlement payment for back wages, it is possible to arrange installment payments provided the employer's agreement to pay in installments is "both reasonable and firm." U.S. Department of Labor Field Operations Handbook § 53C15. Such installments should be made based on an agreed-upon schedule, and DOL may require the employer to waive the running of any statute of limitation.

"In the event an employee refuses to accept back wages payments or cannot be located, 'any sums' not paid to an employee (because of the aforementioned inabilities) within three years shall be payable into the Treasury of the United States as miscellaneous receipts." 29 U.S.C. § 216(c). Upon settlement of an FLSA claim, the DOL may ask the employer to sign (1) an agreement that stipulates present and future compliance with the FLSA, (2) an agreement to deliver certified or cashier's checks for back wages, and (3) a waiver of the statute of limitation. Settlement procedures for the FLSA are quite formal, and employers should confer with the city's attorney prior to attempting any private settlements.

Damages awarded to employees as wages generally are taxable. Liquidated damages awarded to employees, however, are not considered wages for employment under 29 U.S.C. § 216(b), even though they still may be taxable. Keen v. Mid-Continent Petroleum Corp., 63 F. sup. 120 (D. Iowa 1945). The Internal Revenue Service has ruled that "such amounts are income to the employee and thus must be included in their federal income tax returns. Rul. 72-268, 1972-1 CF 313.

Conclusion

The best defense to liability under the FLSA is avoidance. Though not currently among the most litigated federal statutes governing workplace compensation, cities continue to be liable for minimum wage and overtime pay to employees who work beyond the prescribed limits. The act is like a deserted mine field waiting for the uninformed and complacent. The liabilities can be significant to any organization and affect each and every employee in some fashion. Supervisors should be advised to ensure that employees do not work over the limits. Accurate records of hours worked should be maintained.

Before dismissing the act as annoying, remember that its primary objective was to "... eliminate labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers ... without substantially curtailing employment or earning power." In other words, hire more people and minimize your FLSA exposure.
