

# **Eighth Circuit Affirms \$1 Attorney Fee**

## **Award on “Borderline Frivolous” FLSA**

### **Claim**

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The plaintiff's attorney had requested over \$30,000 in fees and costs pursuant to the FLSA's mandatory fee provision, which requires a “reasonable” fee award if a plaintiff prevails in recovering wages.

A quick summary of the case history helps explain the result. Just minutes after the District Court granted summary judgment in favor of the defendants, the plaintiff filed a notice he had timely accepted a previously issued offer of judgment from the defendants to resolve his claims.

Given his timely acceptance of the defendants' offer of judgment, Eighth Circuit precedent required the Court to amend its summary judgment order and enter judgment consistent with the accepted offer, in favor of the plaintiff. Thus, even though the District Court saw no merit to the plaintiff's claims, the FLSA required the court to determine a “reasonable” fee award.

The District Court, however, took issue with nearly every aspect of the plaintiff's attorneys' fee request. The Court stressed, among other things, the fees were inflated arbitrarily and without reason, the plaintiff's attorney demonstrated a lack of candor, and many courts have criticized the plaintiff's attorney for overstaffing cases and then trying to get defendants to pay for its inefficiencies.

Agreeing, the Eighth Circuit recognized (again) the plaintiff's attorney “routinely abused” the FLSA's mandatory fee provision. It rejected the claim a District Court may not deviate from the lodestar—that is, the fee amount resulting multiplying the number of hours worked times the market hourly rate. Such deviation is entirely appropriate if “the plaintiff does not obtain all the relief sought or if the court detects unprofessional conduct on the part of counsel.”

The case is a useful reminder to wage and hour litigants that unreasonable or overly aggressive litigation conduct can back fire, even under laws like the FLSA with mandatory fee provisions.