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Ninth Circuit Explains Broad Expanse of FLSA Retaliation Liability

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The Ninth Circuit issued an Opinion on November 18, 2025 in *Hollis v. R & R Restaurants, Inc.* explaining the broad reaches of retaliation claims under the Fair Labor Standards Act (the "FLSA"). The Ninth Circuit in *Hollis* expanded the boundaries of a cause of action for retaliation under the FLSA, and the potential for liability for employers (and individuals acting "indirectly in the interest of an employer") when taking an adverse employment action against an employee when they make a wage claim under the FLSA.

Plaintiff Zoe Hollis, a dancer at a Portland strip club called Sassy's, sued the club's owners and managers under the FLSA for misclassifying its dancers as independent contractors and violating corresponding wage-and-hour provisions. After Hollis filed the complaint, a man who managed both Sassy's and another club called Dante's canceled an agreement for Hollis to perform at Dante's. In an email to Hollis to cancel the performance, the manager cited the suit against Sassy's, explaining his intent to protect Dante's from legal liability. Hollis amended the FLSA complaint to add the manager and alleged that the manager's decision to bar Hollis from performing at Dante's constituted retaliation in violation of the FLSA.

Defendants sought summary judgment arguing that Hollis was not an employee of Dante's, so the retaliation claim failed. The district court granted summary judgment. Specifically, the district court found "Hollis could not bring a successful retaliation claim without establishing 'that [Hollis was] an employee of'" Dante's. Hollis appealed the summary judgment order with respect to the retaliation claim.

The Ninth Circuit found "the defendant in an FLSA retaliation action need not be the actual employer and the plaintiff need not have been employed by the actual employer when the retaliation occurred." Rather, the defendant need only have "act[ed] ... indirectly in the interest of an employer in relation to an employee" in committing the alleged retaliation. Citing 29 U.S.C. § 203(d).

In support, the Ninth Circuit relied on three key findings.

- First, an FLSA retaliation claim requires an underlying employment relationship, and the employment relationship at issue here was between Hollis and Sassy's. The Ninth Circuit remanded to the district court to determine whether Hollis's work at Sassy's satisfied the "economic realities" test for employee status.
- Second, the retaliator need not directly benefit the employer. Instead, the FLSA merely requires that the retaliator act "indirectly in the interest of" the plaintiff's former employer in relation to the plaintiff. Here,

the cancelling of the contract "constituted an indirect effort to minimize any liability of Sassy's as well as Dante's."

- Third, and finally, the plaintiff does not have to be an employee of the retaliator at the time of the adverse action. Here, the Ninth Circuit found the district court "erred in requiring Hollis to establish that an employee-employer relationship existed with Dante's at the time of the alleged retaliation."

This decision could have implications for employers, especially staffing agencies. This decision shows how expansive the potential liability for FLSA retaliation may be. Both employers and individuals acting in the interest of the employer, such as managers or owners, can be held liable for FLSA retaliation.

Staffing agencies should review policies and procedures to ensure that no one acting on behalf of the agencies, including recruiters, account managers, or other employees in managerial roles, take action that could be construed as retaliation against employees or former employees engaging in the protected activity of making an FLSA claim. These actions could include, but are not limited to, ending temporary worker assignments, demotions, loss of hours, or reducing pay in response to an FLSA claim. If an agency intends on taking an adverse employment action against an individual making an FLSA claim, consult counsel before doing so and document the decision carefully. An agency should avoid any reference to pending or past FLSA claims by the individual.