

Navigating Court Concerns About QR Codes In FLSA Notices

By **Steve Hansen and William Martucci** (July 11, 2025)

In wage and hour class action litigation, the methods of notice to potential class members are increasingly the source of negotiation and refinement by counsel, as well as clarification by the courts.

As a supplement to commonly requested methods of notice to potential members of an action brought under the Fair Labor Standards Act — including mail and email — counsel for plaintiffs are more frequently seeking to include QR codes embedded in the notice.

QR codes allow a recipient to use their phone to scan the code and gain access to a website or application that it links to.

Recipients' ability to use QR codes to access and sign forms electronically has the potential to simplify the opt-in process, and in turn, may increase the likelihood of a response to join the lawsuit.

Methods of Communication for Opt-In Notices

Collective actions under the FLSA require a recipient to be notified of their right to opt in to join a pending lawsuit. This differs from opt-out class actions, which automatically enroll potential class members in the attention placed upon the methods of the notice communication.

Under Title 29 of the U.S. Code, Section 216(b), plaintiffs seek conditional certification of a collective of current, and sometimes former, employees, and typically propose methods of communication for the notice that will be sent to the collective.

The defendants that respond to the conditional certification motion have the opportunity to address not just the substantive question, but also to object to the proposed content and method of any communication.

Under U.S. Supreme Court precedent, established in *Hoffmann-La Roche Inc. v. Sperling* in 1989, district courts have wide discretion to facilitate the content and form of FLSA notices, including the manner of distribution.[1]

In many cases, courts seek to balance the requirements of the lawsuit with potential intrusions on the privacy interests of current and former employees.[2]

Courts have commonly approved notices sent via mail and email,[3] and in some jurisdictions, notices sent by text message have also been authorized.[4]

Some courts have authorized the dissemination of notices through additional means, including publication in local media or via specific social media applications.[5]

As we'll discuss, the emerging trend of using QR codes has been addressed by a few district courts in recent years, but the body of case law is still relatively sparse.



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District Courts Allowing QR Codes With Conditions

In recent decisions, district courts have authorized the use of QR codes in FLSA notices with stipulations.

In an order issued on March 20 in *Myers v. Gilead Sciences Inc.*, the U.S. District Court for the Northern District of California allowed a QR code to be used in the notice over the defendant's objection.

There, the court noted that "a QR code may further facilitate the opt-in process, and the court sees no reason to prohibit it, even if most collective members are capable of mailing or emailing their [consent-to-join] forms." [6]

The caveat to the approval required the QR code to only direct recipients to information that had been approved by the court, along with a method for downloading and submitting the approved forms.

The use of QR codes in a notice had also been approved by the Northern District of California in a 2023 decision in *Costa v. Apple Inc.* with a similar stipulation. [7]

Likewise, the U.S. District Court for the District of Maryland and the U.S. District Court for the Southern District of Florida have also authorized the use of QR codes for FLSA notices, so long as the linked site provides access to an online version of the court-approved notice forms. [8]

District Courts Disfavoring QR Codes

In contrast to the aforementioned examples, other federal courts have frequently denied requests to use QR codes.

In those decisions, the inclusion of QR codes raised several potential issues that distinguished their use from more generally accepted methods of notice.

In a 2021 order issued in *Panora v. Deenora Corp.*, the Eastern District of New York expressed concerns about the specific location of the QR code and the site to which it was linked. [9]

Notably, in *Panora*, the use of the QR code had not been approved by the court, and the court was addressing the multiple ways in which the notice failed to conform to its order in the context of a motion for sanctions.

In granting the defendant's sanctions motion, the court expressed a concern that the recipients could scan the QR code without "having even opened the mailing in question," suggesting that the location of the QR code on the exterior of the mailing presented an issue for the court.

The second concern that the court raised was about the site that was linked to the QR code. In this particular case, it linked to the plaintiffs' counsel on the messaging and social media application WeChat, which the court said could allow a recipient to "find themselves virtually in counsel's office" without having read the notice.

To the court, the use of the QR code on a label could allow a recipient to avoid the specific notice language that the court had approved, in favor of whatever language the plaintiffs'

counsel maintained on the linked site.

In 2023, in a case seeking court approval to use QR codes prior to the issuance of the notice, the Eastern District of New York adopted the reasoning of *Panora* to deny the plaintiffs' request in *Sun v. New G Nails & Spa Inc.*[10]

Last year, the Eastern District of New York expressed similar concerns about the use of QR codes in *Singh v. Anmol Food Mart Inc.*, stating "when courts authorize broad dissemination of a notice ... they are hesitant to allow the addition of a QR code overall." [11]

Fundamentally, these decisions held that the multiple methods of notice that the courts have approved are sufficient in light of concerns that have been raised about QR codes in cases like *Panora*.

Other decisions have restated these concerns, while also noting that counsel seeking to include QR codes have failed to demonstrate their effectiveness.

For example, last year in *Chen v. Thai Greenleaf Restaurant Corp.*, the Eastern District of New York pointed to the numerous methods of communication that it had already approved: mail, email, and social media messages via WhatsApp and WeChat.[12]

The court in *Chen* was not convinced that the QR codes were "necessary or even appropriate" without an explanation as to how the QR codes would be effective or that they would be heavily utilized by recipients.

Similarly, in a 2023 decision in *Yang v. Taiji Oriental Spa NJ Corp.*, the U.S. District Court for the District of New Jersey found that the plaintiff had failed to demonstrate that a QR code would not be duplicative of the physical mail, email, text and social media notices that had already been authorized.[13]

These courts were unpersuaded that recipients could not simply mail or email their consent to join the action.[14]

Analysis of Recent Decisions

Most federal jurisdictions lack case law precedent on the use of QR codes for FLSA notice purposes. As a result, courts are likely to continue to address this issue on a case-by-case basis, with supporting authorities available for each side of the issue.

Based on a review of the existing case law, the key issues for consideration of any proposed use of QR codes within an FLSA notice are as follows.

The website that is linked to the proposed QR code should only contain court-approved language. While this alone may not be sufficient for court approval, it appears to be, at a minimum, required for approval.

Additionally, the use of QR codes will likely be considered in the context of multiple other forms of communication to the employees. If a court has already approved multiple methods of communication as part of a broad dissemination, it may be less inclined to introduce another method.

This may be especially true for courts that have raised concerns about the privacy interests of the collective members in other contexts, such as the use of text messaging to reach

members.

The court may also consider the effectiveness or utility of the QR code, including whether responsiveness to QR codes has shown to be greater than responses to traditional methods, like mail or email.

Absent data or factual support that demonstrates a unique response rate, a court may consider a QR code to be duplicative of the other approved methods.

In lieu of motion practice — which is likely to be more costly and uncertain in outcome — the parties to an FLSA action may be inclined to negotiate and agree on the form and methods of notice in order to jointly present to the court for approval.

The inclusion of a QR code may become an additional factor for defendants to weigh if it is proposed by plaintiffs during the course of negotiations.

Conclusion

The proposed use of QR codes as a method of notice and signing for opt-in collectives has increased in recent years as the technology has become more widely used.

Although case law addressing their use in FLSA actions is still relatively limited, counsel proposing — or opposing — their use should be prepared to address the existing case law with respect to several judicial concerns.

Namely, these concerns include the potential for circumvention of the court-approved notice language; the method's effectiveness when compared with traditional communication methods; and the total number of forms of notice communication, especially where a court considers employee privacy interests in the context of approval of the opt-in notice.

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[1] See e.g., *Jackson v. Superior Healthplan, Inc.*, 2016 WL 7971332, at *6 (N.D.Tex., Nov. 7, 2016) (citing *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 171-72 (1989) ("[B]y monitoring preparation and distribution of the notice, a court can ensure that the notice is timely, accurate, and informative[.]").

[2] See e.g., *Stephens v. Farmers Restaurant Group*, 291 F.Supp.3d 95, 122 (D.D.C., 2018).

[3] *Drake v. Tufts Associated Health Maintenance Organization, Inc.*, 2021 WL 2767308, at *6 (D. Mass., Feb. 12, 2021).

[4] Aleman-Valdivia v. Top Dog Plumbing & Heating Corp., 2021 WL 4502479, at *10 (E.D.N.Y., Sept. 30, 2021).

[5] See Chen v. Dun Huang Corp., 2021 WL 5234421, at *8 (S.D.N.Y., Nov. 8, 2021).

[6] Myers v. Gilead Sciences, Inc. 2025 WL 870357, at *5 (N.D.Cal., March 20, 2025).

[7] Costa v. Apple, Inc., 2023 WL 8101980, at *7 (N.D.Cal., Nov. 21, 2023).

[8] See Li v. Escape Nails & Spa, LLC, 2024 WL 3742764, at *2 (D.Md., Aug. 9, 2024); Bennett v. BT's on the River, LLC, 2023 WL 2838076, at *8 (S.D.Fla., Jan. 31, 2023).

[9] See Panora v. Deenora Corp., 521 F.Supp.3d 177, 180 (E.D.N.Y., Feb. 25, 2021).

[10] See Sun v. New G Nails & Spa Inc., 2023 WL 12071842, at *9 (E.D.N.Y., Aug. 25, 2023).

[11] Singh v. Anmol Food Mart, Inc., 2024 WL 308241, at *5 (E.D.N.Y., Jan. 26, 2024).

[12] See Chen v. Thai Greenleaf Restaurant Corp., 2024 WL 3742718, at *6 (E.D.N.Y., Aug. 9, 2024).

[13] See Yang v. Taiji Oriental Spa NJ Corp., 2023 WL 8469611, at *4 (D.N.J., Dec. 6, 2023).

[14] Chen v. Wow Restaurant TH, LLC, 2023 WL 3976005, at *6 (M.D.Fla., June 13, 2023).