Pennsylvania Federal Court Becomes Latest To Exclude Out-Of-State Plaintiffs From FLSA Collective Actions

Insights
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Federal courts across the country have been split on the issue of whether a court can exercise personal jurisdiction over out-of-state plaintiffs who want to opt-in into a Fair Labor Standards Act (FLSA) collective action. The Eastern District of Pennsylvania just issued a ruling siding with those courts that have minimized the number of members in a collective action, ruling that it lacked specific jurisdiction over FLSA claims of out-of-state opt-in plaintiffs who were not harmed in Pennsylvania. The August 12 decision in *Weirbach v. The Cellecular Connection, LLC*, is an important one, as it provides added support to employers looking to break up a putative collective and reduce their potential legal exposure.

Facts And Legal Analysis

In *Weirbach*, the named plaintiffs alleged that their employer did not compensate them for "off the clock" work. Twenty-two other individuals joined the named plaintiffs in the lawsuit and filed a motion for conditional certification. Although the Pennsylvania district court conditionally certified the collective group of plaintiffs, it decided to narrow its scope to exclude out-of-state plaintiffs, concluding that a 2017 Supreme Court decision required such a move.

In *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, the Supreme Court addressed the issue of whether a California state court could exercise specific jurisdiction over a pharmaceutical company where in-state and out-of-state plaintiffs raised products liability claims against the company. The Supreme Court determined that the California state court lacked jurisdiction over the company for the out-of-state plaintiffs' claims, even though the out-of-state plaintiffs suffered the same harms as the plaintiffs within California.

Back to *Weirbach*, the Pennsylvania district court drew similarities between the mass action in the 2017 Supreme Court case and an FLSA collective action. It determined that FLSA opt-in plaintiffs were real parties in interest to the litigation, unlike a class action where a representative party proceeds on behalf of absent class members. For this reason, the court held that the plaintiffs would need to be from Pennsylvania in order to be entitled to relief from Pennsylvania courts.

The court also explained that limiting the territorial reach of a collective action was consistent with congressional intent, noting that the FLSA lacked a nationwide service of process provision. Meanwhile, the Clayton Act – which Congress passed 24 years before the enactment of the FLSA –

has such a provision, proving that Congress could have included such a nationwide mechanism if it had wanted to broaden the statute's reach.

List Of Decisions In This Area Reveals Wide Split Of Opinions

The Pennsylvania district court joins those line of cases limiting the geographic scope of FLSA collectives by excluding out-of-state opt-in plaintiffs on jurisdictional grounds. They include:

- Washington: *McNutt v. Swift Transportation Co. of Arizona, LLC*, No. C18-5668 BHS, 2020 WL 3819239 (W.D. Wash. July 7, 2020);
- Missouri: *White v. Steak N Shake, Inc.*, No. 20-cv-232, 2020 WL 1703938 (E.D. Mo. Apr. 8, 2020);
- New Hampshire: *Camp v. Bimbo Bakeries USA, Inc.*, No. 18-CV-378-SM, 2020 WL 1692532 (D.N.H. Apr. 7, 2020);
- New York: *Pettenato v. Beacon Health Options, Inc.*, 425 F. Supp. 3d 264 (S.D.N.Y. 2019);
- Massachusetts: *Chavira v. OS Restaurant Services LLC.*, 18cv10029-ADB, 2019 WL 4769101 (D. Mass. Sept. 30, 2019); *Roy v. FedEx Ground Package Systems, Inc.*, 353 F. Supp. 3d 43 (D. Mass. 2018); and
- Ohio: *Rafferty v. Denny's, Inc.*, No. 5:18-cv-02409, 2019 WL 2924998 (N.D. Ohio July 8, 2019); and *Maclin v. Reliable Reports of Texas, Inc.*, 314 F. Supp. 3d 845 (N.D. Ohio, 2018).

Nevertheless, there still remains a split between district courts on the applicability of this legal theory to FLSA cases, including among district courts within the same circuits. They include:

- Massachusetts: *Waters v. Day & Zimmermann NPS, Inc.*, No. CV 19-11585-NMG, 2020 WL 2924031 (D. Mass. June 2, 2020);
- Colorado: *Warren v. MBI Energy Servs., Inc.*, No. 19-CV-00800-RM-STV, 2020 WL 937420 (D. Colo. Feb. 25, 2020);
- New York: *Meo v. Lane Bryant, Inc.*, No. CV186360JMAAKT, 2019 WL 5157024 (E.D.N.Y. Sept. 30, 2019);
- Texas: *Garcia v. Peterson*, 319 F. Supp. 3d 863 (S.D. Tex. 2018);
- California: *Swamy v. Title Source, Inc.*, No. C 17-01175 WHA, 2017 WL 5196780 (N.D. Cal. Nov. 10, 2017); and
- Washington: *Thomas v. Kellogg Co.*, No. C13–5136RBL, 2017 WL 5256634 (W.D. Washington Oct. 17, 2017).

What's Next?

Overall, the *Weirbach* decision is a beneficial one for employers threatened with FLSA wage and hour litigation. While an appellate court has not yet addressed the issue, it is only a matter of time before one will. Until then, the *Weirbach* decision serves as additional, useful precedent applying an important Supreme Court precedent to a FLSA case. It serves as a helpful reference for employers

faced with a collective action involving out-of-state plaintiffs in a state where it has minimal to no presence.

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