Drawing Lines: Where Do Courts Stand On Permitting FLSA Collective Actions Involving Out-Of-State Plaintiffs?

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The application of a key Supreme Court decision remains an important issue for multi-state employers defending federal collective action wage and hour claims – but are we any closer to getting clarity on what remains a frustrating patchwork standard? Many courts that have applied the 2017 SCOTUS decision in *Bristol-Myers Squibb Co. v. Superior Court of California* (*BMS*) in Fair Labor Standards Act (FLSA) cases have recognized the inherent problems associated with out-of-state plaintiffs' efforts to "forum shop" and file a lawsuit in a state more favorable to employees. Another problem that courts face: plaintiffs who attempt to significantly expand the scope of their claims beyond state borders despite the lack of any meaningful connection with the state where the lawsuit is filed. Are there defenses available for employers – and is there a solution in sight?

What Did SCOTUS Decide?

BMS dealt with the question of whether a California state court could exercise specific personal jurisdiction over out-of-state plaintiffs asserting products liability claims against a pharmaceutical company. The wrinkle was that the out-of-state plaintiffs did not suffer their alleged injuries in California. The Supreme Court held that the California state court lacked personal jurisdiction over the company for the out-of-state plaintiffs' claims.

In the wake of this decision, federal district courts have considered whether this standard applies to FLSA collective actions.

Courts Across The Country Are Split

Federal district courts have been divided on the issue – sometimes even those within the same state – with no appellate court yet weighing in. District courts within the 1st, 3rd, 6th, and 8th Circuits have generally leaned toward applying *BMS* to FLSA claims, meaning that plaintiffs are generally blocked from attempting to expand the scope of their federal wage and hour claims beyond their state borders.

However, those courts within the 9th Circuit (up and down the plaintiff-friendly west coast) have leaned toward not applying *BMS* to FLSA claims and permitting an expansive approach to plaintiffs' out-of-state claims. And district courts within the 4th and 11th Circuits have uniformly declined to

apply *BMS* to FLSA collective actions to date, although not all district courts in these circuits have analyzed this issue.

The district courts in the 2nd and 5th Circuit have been mixed on the issue, while only one district court within the 10th Circuit has analyzed the issue to date (it declined to apply *BMS* to an FLSA claims).

Clarity On The Horizon?

As noted above, employers have been able to successfully limit proposed nationwide wage and hour collective actions by relying on *BMS* – at least in certain jurisdictions. Depending on where a case is filed, you might be able to limit the size and scope of a proposed collective action – and, by extension, reduce your potential legal exposure. You should coordinate with your legal counsel whenever faced with a potential claim to determine whether it makes sense to raise the *BMS* standard as a defense, and strategize about the potential chances of success when you raise such an argument.

The question of whether a district court may exercise personal jurisdiction over out-of-state plaintiffs' claims in a FLSA collective action remains contested – and will remain that way until appellate courts step into the debate. As noted above, no appellate court has yet weighed in on the issue. That said, appeals to the 6th and 8th Circuits are currently pending, meaning we could start to gain additional clarity in the very near future. We are tracking those appeals and will continue to monitor legal developments involving *BMS*' applicability in FLSA cases.

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