Federal Appeals Courts Add to Employers' Confusion by Disagreeing on Whether to Dismiss Out-of-State Plaintiffs in FLSA Collective Actions

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Over the past several years, many federal courts have weighed in on whether a key Supreme Court decision requires them to dismiss non-resident opt-in plaintiffs in federal wage and hour collective actions, and there is now disagreement among appeals courts about how to proceed. Just last month, the First Circuit Court of Appeals issued a decision disagreeing with prior decisions from the Sixth and Eighth Circuits, declining to extend the helpful SCOTUS ruling to Fair Labor Standards Act (FLSA) collective actions. While these prior decisions provided clarity, guidance, and a favorable outlook for employers, last month's First Circuit decision blew up all those positive effects and left employers feeling confused. Given the ongoing debate over the applicability of the SCOTUS ruling and the new circuit split, what do employers need to know?

A Closer Look at the Key SCOTUS Ruling

In 2017, the Supreme Court handed down a helpful decision in *Bristol-Myers Squibb Co. v. Superior Court of California*. The case involved a group of close to 700 plaintiffs who filed multiple complaints in California state courts asserting products liability and other claims under state law. The plaintiffs claimed they suffered injuries from a drug sold and manufactured by a pharmaceutical company that was not headquartered or incorporated in California and that maintained "substantial operations" outside of California. Pursuant to a state procedural rule, the plaintiffs combined their lawsuits into one mass-tort action. The suit included non-resident plaintiffs who did not obtain or use the drug in California or receive any treatment in California for their purported injuries.

The case eventually made its way to the Supreme Court, which held that the Fourteenth Amendment's Due Process Clause prohibited state courts from exercising specific jurisdiction over state law claims asserted by non-resident plaintiffs who lacked any connection to the forum and the claims at issue.

Specific jurisdiction is one of the two types of jurisdiction that can be asserted by a court under the Fourteenth Amendment's Due Process Clause. The other is general jurisdiction. Specific jurisdiction requires a suit to arise out of relate to a defendant's contacts with the forum state. General jurisdiction, which did not apply in *Bristol-Myers*, requires a corporation to have contacts that are so **constant** and **pervasive** as to render it essentially "at home" in the forum state.

Sixth and Eight Circuits Extend SCOTUS Ruling to FLSA Collective Claims

On consecutive days in August 2021, the Sixth and Eighth Circuit Courts of Appeal issued decisions that relied upon the rationale of *Bristol-Myers* and held that district courts lacked specific jurisdiction over non-resident opt-in plaintiffs' FLSA claims. The Sixth Circuit's ruling in *Canaday v. Anthem Companies, Inc.* applied to employers in Ohio, Kentucky, Michigan, and Tennessee, and the Eighth Circuit's *Vallone v. CJS Solutions Group* decision covered Missouri, Minnesota, Arkansas, Iowa, Nebraska, South Dakota, and North Dakota.

These appeals courts found that the FLSA does not provide for nationwide service of process. As a result, they looked to Rule 4(k) of the Federal Rules of Civil Procedure and found that jurisdiction over the non-resident opt-in's claims was limited based on state long-arm statutes and the Fourteenth Amendment's Due Process Clause. Since the lower federal courts lacked general jurisdiction over the defendants in each of the cases, the Sixth and Eighth Circuits analyzed whether the district courts could exercise specific jurisdiction based on each of the nonresident opt-in plaintiffs' claims. The appellate courts concluded they could not due to the lack of connection between the out-of-state claims and the forum states.

First Circuit Declines to Extend SCOTUS Decision

On January 13, 2022, the First Circuit Court affirmed the denial of an employer's motion to dismiss the FLSA claims of nonresident opt-in plaintiffs, expressly disagreeing with the *Canaday* and *Vallone* decisions from the Sixth and Eighth Circuits and setting up a classic circuit split.

The First Circuit's *Waters v. Day & Zimmermann NPS, Inc.* decision, covering employers operating in Massachusetts, Rhode Island, Maine, New Hampshire, and Puerto Rico, distinguished the Supreme Court's *Bristol-Myers* decision. It concluded that the Supreme Court's reasoning in that case was based on the Fourteenth Amendment's limits on state court's exercising jurisdiction over state-law claims, not federal law claims. According to the First Circuit, a federal court's jurisdiction over federal claims is governed by the Fifth Amendment, which "does not bar an out-of-state plaintiff from suing to enforce their rights under a federal statute in federal court," provided the defendant maintains the "requisite 'minimum contacts' with the United States."

The First Circuit also disagreed that Rule 4(k)(1) limited a federal court's exercise of personal jurisdiction in collective actions. The First Circuit examined the text of the Rule and its history and determined that Rule 4(k)(1) only concerns service of a summons, not limits on a federal court's jurisdiction after a summons is properly served. As further support, the First Circuit pointed to Rule 20 of the Federal Rules of Civil Procedure, which allows for the joinder of parties whose claims arise from the "same transaction [or] occurrence" and present common "question[s] of law or fact." The First Circuit also pointed to the FLSA and its legislative history to show that Congress created the collective action mechanism to allow all affected employees to bring a single suit against a single employer.

What Should Employers Facing Collective Actions Do?

With the recent split among circuit courts, it is expected that the Supreme Court will eventually take up the issue of *Bristol-Myers's* applicability to FLSA collective actions. However, SCOTUS is notoriously unpredictable, and there's no telling when – or if – it will take up this issue to resolve the circuit split. Its docket for the 2021-2022 term is already full, meaning we won't see any substantial action on this question until Fall 2022 at the earliest.

In the meantime, employers faced with FLSA collective actions will want to work with their legal counsel to understand whether *Bristol-Myers* provides a viable basis for narrowing the scope of any collective action you face. While the answers may be settled (for now) in the states covered by the First, Sixth, and Eighth Circuits, more than 50 lower district courts have weighed in on the debate and you could find fertile ground to help your defense in some of these areas.

Conclusion

The *Canady* and *Vallone* decisions provide an important limitation on forum-shopping, preventing non-resident plaintiffs from dragging a corporation into court in an unfavorable venue. However, until the Supreme Court weighs in and settles the debate, the *Bristol-Myers* defense remains jurisdiction-specific in FLSA collective actions.

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to Fisher Phillips' Insights to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our Wage and Hour Practice Group.

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