The Key To Defending Multistate Collective FLSA Claims

By **Matthew Disbrow and Michael Dauphinais** (December 11, 2023)

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Large multistate collective actions continue to be filed under the federal Fair Labor Standards Act. In addition, with the increase in remote work, more and more companies are employing workers outside of the companies' home states.

This has resulted in relatively new questions about the reach of a court's jurisdiction over out-of-state employers.

For example, if a Michigan employee sues a New York employer for overtime in Michigan, can other employees located outside of Michigan join the lawsuit? Does the Michigan federal district court have personal jurisdiction over out-of-state employees when the employer is located in New York?

The federal circuit courts of appeals are divided on the issue.

To date, four federal circuit courts have considered this question, and in October the U.S. Court of Appeals for the Seventh Circuit accepted an interlocutory appeal to decide the issue in the near future in Signet Builders Inc. v. Jose Vanegas.[1]

The U.S. Courts of Appeals for the Third, Sixth and Eighth Circuits have ruled that there is no personal jurisdiction over out-of-state plaintiffs suing an employer not otherwise subject to personal jurisdiction.[2] The U.S. Court of Appeals for the First Circuit has held the opposite.[3]

The circuit split seems likely to go up for U.S. Supreme Court review, but until then, multistate employers should be aware of a potential case-changing defense.

The Supreme Court's Bristol-Myers Decision

The Supreme Court's 2017 decision in Bristol-Myers Squibb Co. v. Superior Court of California opened up a new avenue for employers to defend against FLSA collective actions involving out-of-state employees.[4]

FLSA collective actions differ from traditional class actions governed by Rule 23 of the Federal Rules of Civil Procedure insofar as class members must affirmatively opt in to the collective. In Rule 23 class actions, all potential class members are included by default unless they affirmatively opt out.

In Bristol-Myers, a mass of plaintiffs — most of whom were not California residents — filed a products liability suit against the defendant in California state court.[5] The defendant was incorporated in Delaware and headquartered in New York.[6] The California Court of Appeal held that California courts had specific jurisdiction over the nonresidents' claims.[7]

The U.S. Supreme Court reversed the California Court of Appeal, holding that, for a court to exercise specific jurisdiction, the "suit must arise out of or relate to the defendant's contacts with the forum."[8] Said differently, there must be "affiliation between the forum and the

underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State."[9]

The Supreme Court held: "As we have explained, 'a defendant's relationship with a ... third party, standing alone, is an insufficient basis for jurisdiction.' This remains true even when third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents."[10]

Following Bristol-Myers, employers began to make a similar argument in FLSA collective actions, and in a growing trend, district courts started ruling in favor of the employers, holding that there was no personal jurisdiction as to claims by out-of-state employees asserted against an employer headquartered in another state and not otherwise subject to personal jurisdiction.[11]

As the U.S. District Court for the Western District of New York put it in its 2021 Goldowsky v. Exeter Finance Corp. ruling, courts began to

> scrutinize the relationship of the specific factual contacts of each non-resident plaintiff, who has opted-in to a § 216(b) [FLSA] collective action, to the forum court, specifically, opt-in plaintiff's place of employment, in order to assure that the assertion of the forum court's personal, i.e., specific, jurisdiction over these claims comports with due process.[12]

Multistate Employers Must Evaluate Both Types of Personal Jurisdiction

The above jurisdictional analysis is not straightforward. The analysis turns on the two types of personal jurisdiction in federal court that can extend to an out-of-state employer.

First, courts examine whether there is general personal jurisdiction, which a court may assert where an out-of-state employer's affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state.[13] A corporate defendant is at home in the states where the corporation has its principal place of incorporation and where it has its principal place of business.[14]

Second, if there is no general jurisdiction, there may still be specific personal jurisdiction over a nonresident defendant. Specific personal jurisdiction exists "whenever the person would be amenable to suit under the laws of the state in which the federal court sits (typically under a state long-arm statute)," as the Seventh Circuit explained in its 2013 ruling in KM Enterprises Inc. v. Global Traffic Technologies Inc.[15]

For example, the Wisconsin state long-arm statute generally extends personal jurisdiction "[i]n any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant."[16] Put differently, a plaintiff must allege a "local act that resulted in a local injury," according to the U.S. District Court for the Western District of Wisconsin's interpretation of the statute in its 2015 ruling in Bednar v. Co-op Credit Union of Montevideo.[17]

These rules become more complicated in FLSA cases.

While in the normal class action context unnamed class members are not actual plaintiffs, in the FLSA context, opt-in employees have party-plaintiff status. An opt-in plaintiff's party-plaintiff status comes with the same status as a named plaintiff in asserting the claims in the lawsuit.

Thus, after opting in, there is no statutory distinction between the roles or nomenclature assigned to the original and opt-in plaintiffs. An opt-in plaintiff's status is, therefore, different from that of an unnamed class member.

In a class action, a certified class has independent legal status and each class member is represented by the court-approved representative and bound by any judgment — unless they opt out. However, in an FLSA collective action, only those who opt in have legal status.

Courts have held that the collective action itself is really a kind of mass action, in which aggrieved workers act as a collective of individual plaintiffs with individual cases and litigate those cases together. Thus, multistate employers are now arguing that out-of-state plaintiffs cannot sue an employer that is not subject to general personal jurisdiction in the forum state.

In other words, in the above hypothetical, the New York employee could not join an FLSA collective action to sue the New York employer in a Michigan court.

The Real-World Impact and Circuit Court Decisions to Date

To date, the Third, Sixth and Eighth Circuits have endorsed the above rationale.

In the view of these three courts, the FLSA opt-in plaintiff is, by virtue of opting in, an active plaintiff like any other. They must establish personal jurisdiction. But the alleged injury for an out-of-state plaintiff does not occur in the forum state, and so there is no specific personal jurisdiction. Thus, without general personal jurisdiction, the out-of-state plaintiff should not be permitted to opt in to the collective.

The First Circuit, on the other hand, has decided that district courts do not need to conduct a separate personal jurisdiction analysis for opt-in plaintiffs because only the named plaintiff's FLSA claims need to arise from the defendant's contacts with the forum state.

Thus, multistate employers that have an FLSA collective action filed against them outside of their home state should immediately conduct an analysis of whether general personal jurisdiction applies. If not, they should consider arguing to the court that only those employees who can establish specific personal jurisdiction should be permitted to opt in to the collective action.

This could dramatically limit potential exposure, drive down the total case value for purposes of settlement, and reduce the overall burden on the employer throughout the litigation.

Conclusion

We expect more circuit courts to take up this issue in the near future given the growing trend in both multistate FLSA collective actions and in multistate employers asserting this personal jurisdiction defense.

Given the existing circuit split, this issue could be ripe for Supreme Court review sooner rather than later, and is certainly one to watch in the wage and hour space over the next several years.

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[1] Signet Builders Inc. v. Jose Vanegas, No. 23-8020 (7th Cir. October 6, 2023).

[2] See Canaday v. Anthem Cos., 9 F.4th 392 (6th Cir. 2021);Fischer v. Fed. Express Corp., 42 F.4th 366 (3d Cir. 2022); Vallone v. CJS Sols.Grp. LLC, 9 F.4th 861 (8th Cir. 2021).

[3] Waters v. Day & Zimmermann NPS Inc., 23 F.4th 84, 94-96 (1st Cir. 2022).

[4] Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cty., 137 S.Ct. 1773, 1781 (2017).

[5] Id. at 1778.

[6] Id. at 1777.

[7] Id.

[8] Id. at 1780.

[9] Id.

[10] Id. at 1781.

[11] See, e.g., Maclin v. Reliable Reports of Tex. Inc., 314 F.Supp.3d 845, 850 (2018) ("The other 424 employees live and work outside Ohio and their claims have no connection whatsoever to this State."); Canaday v. Anthem Cos. Inc., 2020 WL 529708, at *5 (W.D. Tenn. Feb. 3, 2020) ("This Court, thus, does not have personal jurisdiction over any out-of-state potential plaintiffs."); McNutt v. Swift Trans. Co. of Arizona, 2020 WL 3819239, *9 (W.D. Wa., July 7, 2020) (holding that "personal jurisdiction is lacking over the claims of Swift employees who did not live or work in Washington"); Weirbach v. Cellular Connection, 478 F.Supp.3d 544, 552 (E.D. Pa. 2020) (holding that the court lacked specific personal jurisdiction over the claims out of out-of-state plaintiffs); Roy v. FedEx Ground Package Sys. Inc., 2018 WL 2324092, *5 (D. Mass. May 22, 2018) (same); Wiggins v. Jedson Engineering Inc., 2020 WL 6993858, *3 (E.D. Tenn. Aug. 27, 2020); Chavira v. OS Restaurant Servs. LLC, 2019 WL 4769101, *6 (D. Mass. Sep. 30, 2019); Pettanato v. Beacon Health Options Inc., 425 F.Supp.3d 264, 278-279 (S.D. N.Y. 2019); Greinstein v. Fieldcore Servs. Solutions, LLC, 2020 WL 6821005, *4 (N.D. Texas Nov. 20, 2020).

[12] Goldowsky v. Exeter Finance Corp., 2021 WL 695063, *4 (W.D. N.Y. Feb. 23, 2021).

[13] See, e.g., Matlin v. Spin Master Corp., 2018 WL 3496088, *2 (N.D. Ill. July 20, 2018) (internal citations omitted).

[14] Id.

[15] See, e.g., KM Enters., Inc. v. Global Traffic Tech., Inc., 725 F.3d 718, 723 (7th Cir. 2013).

[16] See, e.g., Wis. Stat. § 801.05(3).

[17] Bednar v. Co-op Credit Union of Montevido, 2015 WL 1962116, *2 (W.D. Wis. April 30, 2015).