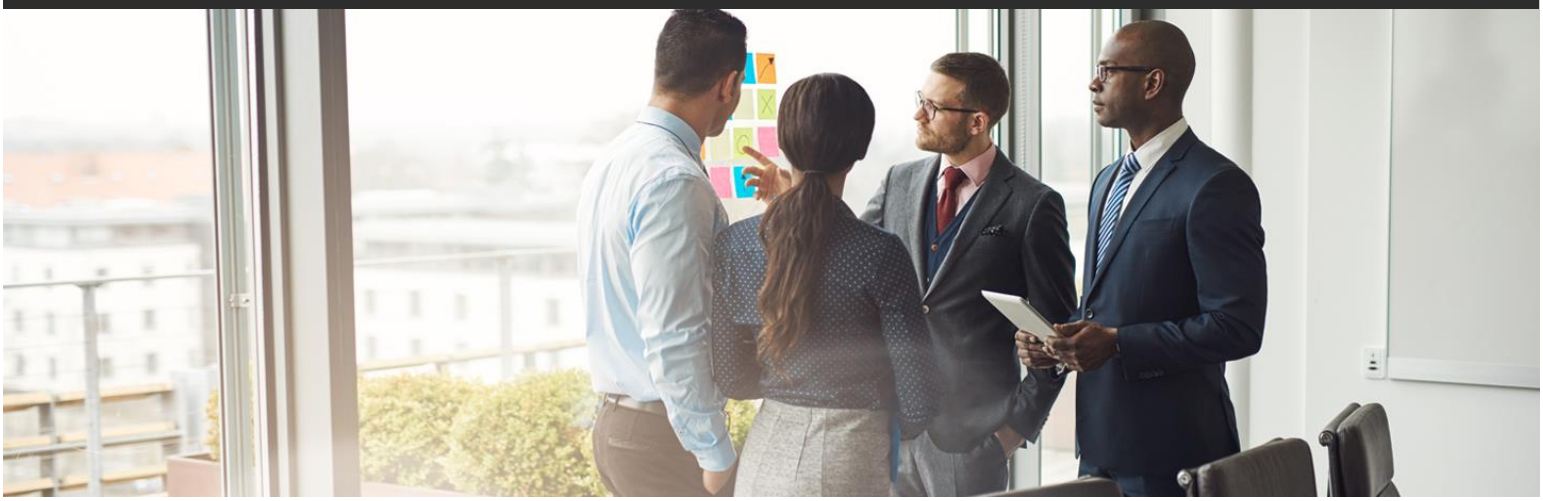
GT GreenbergTraurig

Alert | Wage & Hour Class and Collective Litigation



July 2022

3rd Circuit Issues Practical Death Knell to Nationwide FLSA Collective Actions Involving Employers Not Subject to General Jurisdiction in Circuit

On July 26, 2022, in a win for employers, the Third Circuit Court of Appeals issued a precedential opinion in *Christa Fischer, et al. v. Federal Express Corp., et al*, No. 21-1683, affirming a decision from the Eastern District of Pennsylvania that refused to allow two opt-in plaintiffs to join a putative collective action under the Fair Labor Standards Act (FLSA) because the proposed plaintiffs' claims for unpaid overtime had no connection to Pennsylvania. In affirming the district court's ruling, the Third Circuit held that in FLSA collective actions, "every plaintiff [including opt-in plaintiffs] who seeks to opt-in to the suit must demonstrate his or her claim arises out of or relates to the defendant's minimum contacts with the forum state." Such effectively gives life to the U.S. Supreme Court's ruling in *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773 (2017), insulating out-of-circuit employers from nationwide FLSA actions.

The Third Circuit's ruling aligns with decisions from the Sixth and Eighth Circuits (see *Canaday v. The Anthem Companies, Inc.* 9 F. 4th 392 (6th Cir. 2021) and *Vallone v. CJS Solutions Group, LLC*, 9 F. 4th 861 (8th Cir. 2021), respectively), but conflicts with a First Circuit January 2022 ruling in *Waters v. Day & Zimmerman NP, Inc.*, No. 20-1997.[1] It is unclear how other circuits will rule on this issue or whether the Supreme Court will step in to resolve the circuit split, but the Third Circuit's decision is a win for out-of-circuit employers subject to proposed nationwide FLSA collective actions within the circuit. The scope of any such collective actions should now be confined to those employees who can establish the court has

[1] See prior GT insights on *Canaday, Vallone,* and *Zimmerman*.

specific personal jurisdiction over their FLSA claim(s), most likely limiting putative collective actions to those employees who performed work in the state where the action is filed.

Although a victory for employers, the impact of *Fischer*, *Canaday*, and *Vallone* is not the elimination of nationwide or multi-state FLSA collective actions (or nationwide class actions under Rule 23 of the Federal Rules of Civil Procedure). Rather, employers should increasingly expect workers to file such cases in courts of general jurisdiction, i.e., in venues where the employer is incorporated or has its principal place of business.

Authors

This GT Alert was prepared by:

- James N. Boudreau | +1 215.988.7833 | James.Boudreau@gtlaw.com
- Malcolm James Ingram | +1 215.988.7830 | ingramm@gtlaw.com