



Circuit Split Highlights *Bristol-Myers Squibb's* Effect on FLSA Actions

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Key Takeaways:

- The Supreme Court's *Bristol-Myers Squibb* holding that state courts lack personal jurisdiction over defendants in cases involving state-law personal injury claims of non-forum plaintiffs has had implications throughout litigation in federal courts, including for FLSA collective actions.
- A recent petition for writ of certiorari addresses a circuit split that has divided courts over whether federal courts can exercise personal jurisdiction over a defendant in an FLSA collective action that includes opt-in plaintiffs who worked for the defendant outside the state where the court is located.

The United States Supreme Court has been asked to resolve a circuit split with potentially far-reaching implications for Fair Labor Standard Act (FLSA) collective actions and other types of class and collective litigation in federal court.

The FLSA allows employees to maintain a collective action on their own behalf and on behalf of other similarly situated employees for unpaid wages and overtime compensation. Similarly situated employees who wish to opt in to the lawsuit must file their consent in writing.

In 2017, the Supreme Court held in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), that state courts lack personal jurisdiction over defendants where the claims arise from the defendants' activities outside of the forum state. Since then, a split emerged among federal circuit courts of appeals about *Bristol-Myers Squibb's* application to FLSA collectives.

In *Fisher v. Federal Express Corp.*, 509 F. Supp. 3d 275 (E.D. Pa. 2020), Christa Fischer, a former FedEx security specialist and Pennsylvania resident, filed an FLSA collective action against FedEx in Pennsylvania alleging that FedEx underpaid overtime that was due her and other FedEx security specialists. Security specialists in New York and Maryland opted in to join the action. However, the district court denied the out-of-state specialists' request to join, finding that under *Bristol-Myers Squibb*, the court lacked specific personal jurisdiction over FedEx with respect to the out-of-state opt-ins' claims.

Fischer and the out-of-state opt-ins appealed to the Third Circuit. *Fischer v. Fed. Express Corp.*, 42 F.4th 366 (3d Cir. 2022). Joining the Sixth and Eighth Circuits, the Third Circuit agreed with the district court, holding that each opt-in plaintiff who works for the employer outside the state where the lawsuit is maintained must establish specific personal jurisdiction by showing that their individual claims arise out of or relate to the defendant's minimum contact with the forum state. This is a departure from the First Circuit, which holds that while an initial plaintiff's claims must meet minimum contacts with the forum state, opt-in plaintiffs' claims need only arise out of or relate to a defendant's minimum contacts with the entire nation. This split highlights the impact *Bristol-Myers Squibb* has had on FLSA collective actions.

Fischer and the out-of-state opt-ins have now petitioned the Supreme Court to review and resolve the circuit split. If the Court decides to hear this case, it could have ramifications not only for collective actions but also for other types of representative suits in federal court.

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