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Second Circuit Joins Majority View Limiting Nationwide FLSA Collective Actions

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On May 4, 2026, the Second Circuit joined the Third, Sixth, Seventh, Eighth, and Ninth Circuits in holding that a district court may not authorize notice to out-of-state potential opt-in plaintiffs in an FLSA collective action unless the court has personal jurisdiction over the defendant with respect to those workers' claims.

In *Provencher v. Bimbo Foods Bakeries Distribution LLC*, the plaintiffs, two Vermont delivery drivers, alleged that Bimbo misclassified them as independent contractors and failed to pay them for overtime work. They sought to send notice not only to similarly situated drivers in Vermont but also to drivers in Connecticut and New York. Bimbo objected, arguing that the Vermont federal court lacked personal jurisdiction over the company with respect to claims asserted by non-Vermont drivers.

The Second Circuit agreed with Bimbo. Relying on the Supreme Court's 2017 decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, the court held that, before conditionally certifying an FLSA collective action and authorizing notice to potential opt-ins, a district court must ensure that it has personal jurisdiction over the defendant with respect to the claims of each of those workers. Because the FLSA does not contain a nationwide service of process provision, the Vermont federal court's personal jurisdiction was limited by Vermont's long-arm statute and Fourteenth Amendment due process principles.

That proved fatal to the proposed Connecticut and New York opt-ins. Bimbo is incorporated in Delaware and has its principal place of business in Pennsylvania, and the plaintiffs made no showing that the Connecticut or New York drivers' claims arose out of Bimbo's contacts with Vermont. The fact that the out-of-state drivers allegedly were subject to similar pay practices was not enough.

So what does this mean for employers? In the Second Circuit, plaintiffs seeking to pursue a multi-state FLSA collective generally will need to sue in a forum where the employer is subject to general jurisdiction, typically its state of incorporation or principal place of business, or limit the proposed collective to workers whose claims arise out of the employer's contacts with the forum state. Employers defending FLSA collective actions in New York, Connecticut, and Vermont should consider raising personal jurisdiction objections early where plaintiffs seek notice to out-of-forum workers.

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