Legal Update Article

Another Circuit Rules *Bristol-Myers* Applies to FLSA Collective Actions, Bars Out-of-State Opt-Ins

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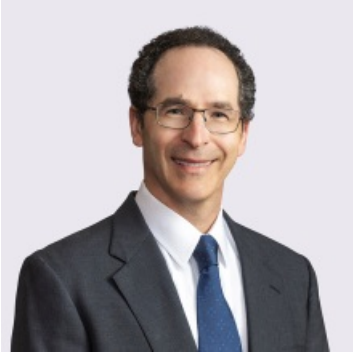
Meet the Authors



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The U.S. Court of Appeals for the Seventh Circuit joins a growing number of federal circuits to hold the U.S. Supreme Court's 2017 decision in *Bristol-Myers Squibb v. Superior Court,* that sharply limited the use of nationwide multi-plaintiff suits, applies to putative Fair Labor Standards Act (FLSA) collective actions. ***Vanegas v. Signet Builders***, No. 23-2964 (7th Cir. Aug. 16, 2024).

The Seventh Circuit covers Illinois, Indiana, and Wisconsin. The decision adds to the number of jurisdictions where employers may not be subjected to nationwide collective actions of federal wage and hour, equal pay, or age discrimination claims unless they are headquartered or incorporated in the state.

Bristol-Myers

In *Bristol-Myers,* a mass tort case, the Supreme Court held a California federal court did not have personal jurisdiction over claims against a non-resident company brought by out-of-state plaintiffs. Personal jurisdiction requires that the claims "arise out of or relate to" the defendant's contacts with the forum state.

That jurisdictional requirement applies to each individual claim brought by each plaintiff, the Supreme Court explained. The out-of-state plaintiffs could not meet the requirement.

Vanegas: Bristol-Myers Applies

Vanegas is a putative wage-hour collective action against Signet Builders, a construction company incorporated and headquartered in Texas which operates nationwide. The suit was filed in Wisconsin, where the named plaintiff worked, so the federal court had jurisdiction over the named plaintiff's claims. At issue was whether the court had jurisdiction over Signet employees outside Wisconsin who wanted to opt-in to the suit.

A divided panel of the Seventh Circuit held that *Bristol-Myers* jurisdictional requirements apply to FLSA collective actions. Therefore, the employees would have to show the court had jurisdiction over their individual wage and hour claims. Because the out-of-state employees' claims did not arise from contacts with Signet in Wisconsin, the court lacked jurisdiction, the appeals court found, and the out-of-state employees could not opt-in to the suit.

The plaintiffs have indicated they will seek panel rehearing, or rehearing by the full en banc Seventh Circuit. The appeals court has given the plaintiffs a September 27 deadline to file their petition.

Clear Majority

The Seventh Circuit joins three other circuits on this issue. There is now a 4-1 circuit split that solidly favors employers.

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Prior to *Bristol-Myers,* courts did not require opt-in plaintiffs in FLSA cases to individually establish that the court has jurisdiction over their claims against the defendant. However, several circuit courts since have found that opt-in plaintiffs must demonstrate the court has personal jurisdiction over each of their claims. These include:

- Third Circuit in *Fischer v. Federal Express Corp.,* 42 F.4th 366 (2022)
- Sixth Circuit in *Canaday v. Anthem Cos., Inc.,* 9 F.4th 392 (2021)
- Eighth Circuit in *Vallone v. CJS Solutions Group, LLC,* 9 F.4th 861 (2021)

The Third Circuit has jurisdiction over Delaware, New Jersey, and Pennsylvania. The Sixth Circuit covers federal courts in Kentucky, Michigan, Ohio, and Tennessee. The Eighth Circuit includes Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

The First Circuit, however, has held that *Bristol-Myers* does not apply to collective actions and allowed FLSA collectives against nonresident employers to include members from outside the forum state in *Waters v. Day & Zimmermann NPS, Inc.,* 23 F.4th 84 (2022). The First Circuit includes Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.

The Supreme Court rejected the defendant's petition for review the divided First Circuit panel's outlier decision. This was one of several opportunities the Supreme Court has declined to resolve the question whether *Bristol-Myers* applies to FLSA collective actions.

Takeaways

With the growing number of circuits applying *Bristol-Myers* in the FLSA context, it is much harder for employees to pursue massive nationwide collective actions and to engage in forum shopping to bring those actions in a favorable jurisdiction.

In circuits that have adopted *Bristol-Myers,* collectives will be limited to those employees in the state where the suit is filed. An employer still faces the prospect of a nationwide FLSA collective action brought against them in the state in which the employer has its principal place of business, is incorporated, or is subject to general jurisdiction. The application of *Bristol-Myers* to FLSA collective actions has caused an uptick in plaintiffs filing these suits in the state where a company is headquartered. This trend is likely to continue. *Bristol-Myers* also means that, although employers may be able to avoid a nationwide litigation, they may be subjected to duplicative multistate collective actions in different jurisdictions.

Finally, the *Bristol-Myers* analysis differs with respect to class actions. Several federal appeals courts (including the Sixth and Seventh Circuits) have ruled that *Bristol-Myers* does not apply to Rule 23 class action suits. If a consensus emerges that*Bristol-Myers* applies to collective but not class actions, it may alter plaintiffs' calculation of where, and under what statute, to sue. It is a murky landscape.

Please contact a Jackson Lewis attorney if you have questions about the *Vanegas* decision or the application of *Bristol-Myers* to class and collective actions.

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