

## Employers At Greater Risk Of Facing Collective FLSA Actions in Remote Forums Under New Ruling

PS&H Partner and Chair of the Labor & Employment Group, Alicia Samolis, was quoted in *Rhode Island Lawyers Weekly* commenting on a recent decision from U.S. District Court Judge Nathaniel M. Gorton in Boston.

In *Waters v. Day & Zimmerman NPS, Inc.*, the Massachusetts Federal District Court was confronted with the question of whether employees who would not have personal jurisdiction over an employer in an individual action would be afforded jurisdiction in Massachusetts when joined by a plaintiff with proper jurisdiction in a Fair Labor Standards Act ("FLSA") collective action.

The judge "concluded that FLSA [Fair Labor Standards Act] collective actions are more akin to class actions brought pursuant to Federal Rule of Civil Procedure 23 than the mass tort claims" and denied the employer's motion to dismiss for lack of jurisdiction.

Judge Gorton wrote, "Congress enacted the FLSA (1) as a remedial statute specifically to address employment practices nationwide, and (2) specifically to limit duplicative lawsuits where numerous employees have been harmed by the same employers."

Alicia suggested that this decision raises a red flag for employers operating within the 1st Circuit.

"This was particularly disappointing because, prior to this case coming out, the best [precedent] we had in this jurisdiction was an opinion by a [Massachusetts U.S. District Court] judge to the contrary," Alicia said, referring to the contrary decision reached by a Massachusetts U.S. District Court in *Chavira v. OS Rest. Servs., LLC*, No. 18-cv-10029 (D. Mass. Sept. 30, 2019). "That made employers hopeful that [the reasoning in *Chavira* was] the direction our circuit would go."

Alicia expressed concern with the notion that there is not a significant risk for employers of forum-shopping in FLSA cases. She countered that the opposite is true, noting that the risk was exemplified in *Waters*, in which the briefs filed in support of the motion revealed that, apart from the lead plaintiff, none of the opt-in plaintiffs worked in Massachusetts.

"Essentially, they forum-shopped to be in Massachusetts, which is not surprising because Massachusetts is a pretty favorable forum for employees," Alicia said. "Now, if I'm an employer and get a collective action in a wage case, it's going to be in the least favorable state that I have an employee in."

In denying the defendant's motion to dismiss, Judge Gorton also found sound policy reasons for distinguishing FLSA cases, in particular avoiding duplicative lawsuits and fulfilling the statute's goal of providing nationwide standards for addressing alleged unlawful employment practices.

"The Court has personal jurisdiction over claims brought by the named plaintiff, Waters, which is all that is needed to confer personal jurisdiction over defendant in the instant putative FLSA collective action," he concluded.

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