

Venue Is Key For FLSA Suits 1 Year After Cracker Barrel Case

By Irene Spezzamonte

Law360 (July 17, 2026, 2:25 PM EDT) -- Workers have been reevaluating where to lodge Fair Labor Standards Act suits in the year since the Ninth Circuit ruled in a case against Cracker Barrel that only plaintiffs who reside in a state where an FLSA case started in a collective can join a collective, attorneys say.



One year ago, the Ninth Circuit, ruling in a Cracker Barrel case, cited a 2017 Supreme Court decision in holding that only plaintiffs who reside in a state where a Fair Labor Standards Act case started in a collective can join a collective. (AP Photo/Ted Shaffrey)

In July 2025, a panel **ruled in a case against Cracker Barrel** that only workers in Arizona could join the FLSA collective alleging tip-credit violations. That is because the U.S. Supreme Court's 2017 decision in **Bristol-Myers Squibb Co. v. Superior Court of California**  applies to collective suits, the panel said.

In Bristol-Myers, the justices **ruled that a plaintiff's claim** must "arise out of or relate to the defendant's forum conduct" for the plaintiff to be allowed to join a collective action.

Several other appeals courts have tackled whether out-of-state plaintiffs can join a collective, with the **Sixth, Eighth, Seventh, Third** and **Second** circuits reaching the same conclusion as the Ninth. The First Circuit, so far, stands alone in ruling that Bristol-Myers **doesn't apply**.

The Ninth Circuit decision has affected the "architecture" of FLSA cases, leading plaintiff-side attorneys to be more careful about where to file FLSA suits, said Gerald L. Maatman Jr., the chair of Duane Morris LLP's class action defense group.

"You're seeing a dent, so to speak, in the enthusiasm of the plaintiffs bar to be filing in California because of that decision, and so they're taking a hard look and saying, 'If I really want a nationwide case, I need to sue the corporation either in the state where its headquarters are, typically not California, or where it's incorporated, typically Delaware,'" Maatman said.

Maatman said as a result of the decision, claims with a nationwide reach are less common, and there has been an increase in smaller cases.

Overall, the Ninth Circuit decision is an important one for wage and hour attorneys to keep in mind when handling FLSA claims, he said.

"Sometimes cases are book lawyer cases that are studied in law school, and [they stand] for a principle. And then there are other cases that impact the real-life nuts and bolts of how these cases are litigated," Maatman said. "Cracker Barrel certainly is in the second category."

The panel's decision has also led workers to lodge more state claims, especially in states such as Colorado and Washington that have passed legislation to increase penalties, Robert Hingula of management-side firm Polsinelli PC said.

"If you don't have personal jurisdiction over a nationwide class, I think it's just incentivizing plaintiffs to bring in state claims, too, in order to try to get more penalties on top of it," Hingula said.

The decreased possibility of achieving a nationwide collective could lead to higher litigation costs, since plaintiff-side attorneys will file suits in multiple states, said worker-side attorney Camron Dowlathshahi of MSD Lawyers.

"Employees with relatively small wage and hour claims may be less likely to pursue them if collective litigation becomes more cumbersome," Dowlathshahi said.

Multiple suits alleging similar claims, but in different jurisdictions, have increased the work for courts, because they have to sort out where the opt-ins are located, worker-side attorney Brian J. Markovitz of Joseph Greenwald & Laake PA said.

"That's what the change has been, it's just created probably more cases for the judicial branch and more work to check," Markovitz said.

However, this has not been "necessarily cutting down on workers' abilities to pursue [claims of] not being paid properly," according to Markovitz.

In its July 2025 decision, the Ninth Circuit also declined to adopt a stricter test for certifying collectives under the FLSA.

Courts have used the long-standing two-step process to certify collectives, under which they first grant conditional certification for notice purposes if a "modest factual showing" is met and then grant final certification to the collective.

However, in recent years, several courts of appeals introduced **new standards** that are, at times, **more rigorous**.

That portion of the decision did not introduce anything new within the Ninth Circuit, as district courts there were already following the two-step process to certify collectives, said worker-side attorney Rebecca Ojserkis of Cohen Milstein Sellers & Toll PLLC.

Despite attorneys' expectations that the Fifth and Sixth circuits' decisions that came up with different standards to certify collectives were to create a "sea change," that shift hasn't happened, Ojserkis said.

"You're just not seeing gigantic practical changes between the circuits even, and within the circuits, and I think it's really proving that the issuance of notice doesn't need to be a big fight," she said. "It's just about making sure all of the plaintiffs who could be impacted by this decision are aware of it."

--Editing by Neil Cohen and Emma Brauer.

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