

News

Rocco Quoted in *Law360* Story Titled “6th, 8th Circs. Crack Down On Nationwide Collective Actions”

Related Attorneys

Adam J. Rocco

Related Services

Employment Counseling

Employment Litigation

Labor and Employment

NEWS | 8.30.2021

Adam Rocco, a partner in the Vorys Columbus office, was quoted in a *Law360* about recent decision from two U.S. circuit courts that limit the ability of plaintiffs to bring nationwide collective actions under the Fair Labor Standards Act (FLSA).

The story states:

“Adam Rocco, a Vorys Sater Seymour and Pease LLP partner who represents businesses, said the rulings leave open the question of when in litigation is the right time for a company to move to dismiss out-of-state plaintiffs who opt in.

Early in litigation probably would not make sense because additional workers usually opt in after the lead plaintiff files the complaint and the case is underway for a while, Rocco said.

‘Some courts have held that it isn't an issue until the plaintiffs move for conditional certification,’ he said.

But that approach pegs the motion's ripeness to an event that might not happen, because the lead plaintiff might never move for conditional certification. Certification is the process by which the lead plaintiff conducts court-supervised outreach to other workers who may have experienced the same alleged violation and offers them an opportunity to opt in.

Complicating the timing question even further, additional workers can opt into a suit before the lead plaintiff moves for certification, and opt-in plaintiffs are not automatically dismissed if the court denies a certification motion.”

The story also states:

“Rocco said making the motion before an out-of-state plaintiff opts in would be premature, but moving to dismiss opt-ins after they join makes sense.

The parties could then wait for the court's ruling or decide among themselves whether to exclude out-of-state workers or move the case to a judicial district that has jurisdiction over everyone's claims.

'It may be just a collective action that's limited to that jurisdiction or they may decide to dismiss the case and refile in the home state jurisdiction, or try to get venue transferred to the appropriate district court encompassing the headquarters of the corporation,' he said."

To read the entire story, please visit the [Law360 website](#). (Subscription may be required).

To read a Vorys Client Alert on the Sixth Circuit Decision, [click here](#).