Employers May Fight Back Through The Class Action Fairness Act

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Employers throughout the United States may soon begin to fight back in federal court against forum-shopping plaintiff lawyers through the Class Action Fairness Act of 2005 (the "Act"). The Act recently became effective when it was signed into law on February 18, 2005.

The stated purpose of the Act is to: "(1) assure fair and prompt recoveries for class members with legitimate claims; (2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and (3) benefit society by encouraging innovation and lowering consumer prices."

While the Act is aimed primarily at products liability and mass tort cases, it also may significantly impact employment-related class actions such as discrimination and wage and hour cases.

Expanded Federal Jurisdiction
The Act dramatically modifies federal law by permitting all class actions to be filed in federal court if the aggregate value of the claims exceeds $5 million and any class member is a citizen of a different state from any defendant. Under prior law, the claims of individual class members could not be aggregated to meet the jurisdictional amount.

Removal of cases from state court to federal court also is made easier by the Act. For example, cases filed in state court involving at least 100 potential class members may now be removed to federal court. The Act also permits any defendant to remove the case to federal court without the consent of other defendants. The Act also eliminated the prior rule that removal had to occur within one year of filing in state court.

In the past, plaintiffs generally have been more successful with class actions in state court than in federal court because state class action rules tend to be easier to satisfy than the federal rules. Opponents thus claim the Act severely affects class members' ability to pursue class actions because of the more rigorous rules in federal court. Opponents also claim class members' rights will be reduced because federal courts tend to interpret state substantive laws narrowly.

While the Act makes removal of state court class actions to federal court easier, federal courts also are granted more discretion to deny employers' removal requests. Under the Act, federal courts may decline jurisdiction if more than one-third, but less than two-thirds, of the class members are citizens of the state in which the action is filed. Federal jurisdiction must be declined if two-thirds or more of the potential class members and at least one primary defendant are citizens of the state where the action is originally filed.

No Retroactivity
The Act applies only to civil actions "commenced" on or after February 18, 2005. In a recent overtime class action, Office Depot removed a pending state case to federal court prior to trial. On April 11, 2005, the Tenth Circuit Court of Appeals held the Act did not apply because the case "commenced" when it was originally filed during 2003 - not when it was removed to federal court. The case was ordered back to state court.

Class Action Settlements
The Act also aims to ensure fair settlements for class members. Under the Act, federal courts may not approve class action settlements that provide class members with coupons requiring purchases, while class counsel receive large attorney fees awards, unless the settlement is fair, reasonable and adequate.

Class action settlements also may not be approved if the payments to class counsel result in a monetary loss to the class members, unless the court finds the loss is substantially outweighed by non-
Federal courts also may not approve class action settlements providing greater recovery to some class members than others solely because those class members are located geographically closer to the court.

Wage and Hour Class Actions
Although it is much too early to predict how the Act may affect employment-related class actions in general, the Act is expected to impact certain types of wage and hour cases.

In overtime cases, plaintiff attorneys often pursue state and federal actions concurrently or consecutively to increase the number of potential class members, to take advantage of state laws, and to seek lucrative attorneys’ fee awards. The procedural rules, however, are different under state and federal law.

In federal court, class members in a collective action under the FLSA must “opt-in” to be included in the case. In state court, class members are automatically included in the action if the case is certified by the court as a class action, unless they affirmatively “opt-out” of the class. The different federal and state procedures greatly affect the size of the class, which has caused most plaintiff attorneys to pursue class actions in state court.

Under the Act, state overtime class actions may now be removed to federal court provided the cases meet the expanded federal jurisdiction. In such cases, employers may begin to benefit from the more stringent federal class action rules.

Practical Application for Employers
Employers are cautiously optimistic the Act will permit removal of a significant number of future cases from state court to federal court. The removal of cases to federal court also may assist employers in the transfer of cases to locations more convenient for corporate defendants.

To illustrate, if a class action is filed in state court with more than $5 million in controversy, and the employer is not incorporated in the state and does not have its principal place of business in the state, the action may be removed to federal court if the employer is the sole defendant. If other defendants in the case are citizens of the state where the suit is filed, the case could still be removed if the plaintiffs are not seeking significant relief from those defendants, if the alleged conduct of those defendants does not form a significant basis for the claims asserted, or if fewer than two-thirds of the individuals making up the proposed class are citizens of the state in which the action was originally filed.

After removing the case, the employer could then request the federal court to transfer the case under transfer of venue rules to any district in which the action could have been filed. By so doing, the case could be transferred to a location more convenient to the employer, i.e., geographically closer and perhaps more favorable.

Ultimately, employers hope the Act accomplishes one of its intended purposes, namely benefits society by encouraging innovation and lowering consumer prices, or in other words drastically reduces the number of class actions targeting employers.