

[Blogs](#)

January 14, 2021

Wage & Hour Developments

Panel Upends the Rules of FLSA Collective Actions in the Fifth Circuit

The U.S. Court of Appeals for the Fifth Circuit has ordered courts to discontinue using a "two-step" certification process where the first step customarily results in the distribution of notice of opt-in rights to putative class members. The order affirmatively rejects the nearly "universal" approach of the 1987 New Jersey district court opinion, *Lusardi v. Xerox Corporation*, where courts often authorize notice of opt-in rights on a "fairly lenient" basis without rigorous inquiry into whether class members are similarly situated. Now, district courts within the Fifth Circuit must use a different approach and rigorously scrutinize the similarity of the proposed collective action class at an early stage of the case before authorizing notice to non-parties. [Read the full update on PerkinsCoie.com.](#)

Authors



[Jason R. Elliott](#)

Senior Counsel

JElliott@perkinscoie.com [214.965.7723](tel:214.965.7723)

Explore more in

[Labor & Employment](#)

Blog series

Wage & Hour Developments

The regulatory landscape, appetite for administrative agency enforcement, and judicial interpretations related to wage-and-hour issues are rapidly evolving. Our blog is a one-stop resource for federal- and state-level updates and analysis on wage-and-hour-related developments affecting employers.

[View the blog](#)