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

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## Wage & Hour Developments

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