

WASHINGTON CASE UPDATE

Employing Washington's Long-arm Statute Against Out of State Employers

From the desk of John Kreutzer: How far does Washington's long-arm statute reach in the employment context? Can an officer of a foreign corporation employing a Washington resident be subject to personal jurisdiction? Washington's Supreme Court sorts out the confusion of the lower courts on this very issue.

case in point...

Claims Pointer: When attempting to assert personal jurisdiction over a nonresident defendant, routinely at issue is whether the nonresident defendant has the requisite "minimum contacts" with the state. In this opinion, the Washington Supreme Court held that employing a Washington resident to conduct business within the state is sufficient to meet the "minimum contacts" requirement. Further, while the actions of a business are not automatically imputed to its employees and officers, an officer or employee is not shielded from personal jurisdiction simply because their contacts with the state occurred in the employment context. Personal jurisdiction of an employee or officer is decided on a case by case basis.

Failla v. FixtureOne Corp., --- P.3d ----, 2014 WL 4925671 (Wash.)

Kristine Failla (Failla), a Washington resident, filed suit against her former employer, Kenneth Schutz (Schutz), the founder and chief executive officer of FixtureOne Corporation (FixtureOne), after Schutz refused to pay Failla sales commissions owed. The parties filed cross motions for summary judgment. Schutz argued that the court lacked personal jurisdiction because both he and FixtureOne were based in Pennsylvania, and, at the time Failla was hired, FixtureOne had neither a physical presence nor customers in Washington. The trial court determined that it did have personal jurisdiction over Schutz, denied Schutz' motion, and granted summary judgment in favor of Failla. The lower court's decision was then reversed by the Court of Appeals, which held that the employment relationship was not enough to confer jurisdiction over Shultz via Washington's long-arm statute. Washington's Supreme Court granted review.

Pursuant to Washington's long-arm statute, a nonresident defendant can be subject to the personal jurisdiction of Washington courts if (1) the nonresident defendant or foreign corporation purposefully does some act or consummates some transaction in Washington; (2) the cause of the action arises from, or is connected with, the act or transaction in Washington; and (3) personal jurisdiction by the Washington courts does not offend traditional notions of fair play and substantive justice.

Schutz asserts that he is not subject to personal jurisdiction in Washington because he has never been to Washington and because he was only an officer and employee of FixtureOne. While the actions of a corporation are not automatically

imputed to its officers and employees, contact within the context of employment does not automatically shield a party from personal jurisdiction. Indeed, as the founder and CEO of FixtureOne, Schutz appears to have been Failla's primary, if not exclusive, contact with FixtureOne. He responded to her job inquiry, interviewed her, hired her, set her salary, issued her checks, promoted her, issued her a raise, and calculated the commission she had earned on sales. Contrary to the Court of Appeals' analysis, it is not necessary that an individual target consumers in Washington. Employment of a Washington resident can constitute sufficient contacts to subject a nonresident defendant to personal jurisdiction.

In the instant case, when an out of state employer hires a Washington resident and conducts business in Washington through that employee for two years, it should reasonably anticipate defending a wage claim in Washington. Employing a Washington resident to perform work within the state meets the requirement of conducting a business transaction within the state and establishes the requisite "minimum contacts." Further, because Schutz was the officer responsible for the hiring, firing, payment, and promotion of Failla, his contacts with the state were sufficient to confer personal jurisdiction over him in the context of Failla's wage dispute.



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