

Civil Procedure

Eric M. Fink

efink@elon.edu

336.279.9334

Office Hours [by appointment](#)

Fall 2017

Room 206

Mondays, Wednesdays, & Fridays, 1:30 – 3:15 pm

Federal Question Jurisdiction

Eleanor (domiciled in the state of Keystone) is employed by Bombco, Inc. (“Bombco”), a munitions manufacturer (incorporated in Delaware with its sole place of business in Keystone). Bombco sells most of its products to the U.S. Defense Department for use by the U.S. military.

During her first six months of work, Eleanor has been paid at the rate of \$20/hour. She recently learned that a federal law, the Defense Contractor Wage Fairness Act (“DCWFA”), requires federal defense contractors to pay all employees at a rate no less than the “local prevailing wage” for employees in the same job classification under the U.S. Department of Labor’s “Standard Occupational Classification” (“SOC”) system. Eleanor believes that her job falls within the SOC classification for “Engineering Technicians”, for which the “local prevailing wage” under the DCWFA is \$25/hour.

Believing that she has been underpaid, Eleanor decides to sue Bombco for \$4800 (representing the alleged underpayment of \$5/hour for the 960 hours she worked during the six month period). The DCWFA does not provide for a private right of action for employees who believe they have not been paid at the applicable prevailing wage rate. Instead, Eleanor asserts a claim under the state Wage Payment & Collection Law (“WPCL”), which provides that an employer must pay all wages earned by employees on regularly scheduled paydays. The WPCL also provides that an employee may bring a civil lawsuit to collect any unpaid wages. A plaintiff suing under the WPCL must allege and prove the following:

1. The applicable rate of pay for the period subject to the suit,
2. The total amount of wages earned during the same period, and
3. The total amount of alleged underpayment during the same period.

The Keystone Supreme Court has held that a WPCL plaintiff may satisfy the first require-

ment by offering evidence of a wage rate imposed by state or federal law.

Bombco disputes Eleanor's wage claim on two grounds. First, Bombco contends that the Defense Contractor Wage Fairness Act does not apply to Eleanor's job. Second, Bombco contends that, even if the DCWFA does apply, the proper SOC classification for Eleanor's job is "Cutting Machine Operators, Metal & Plastic", for which the local prevailing wage is only \$20/hour.

Does a federal court have subject-matter jurisdiction over Eleanor's suit?

Model Answer

A federal court will not have diversity jurisdiction in this case, but may have federal question jurisdiction.

Diversity jurisdiction has two requirements: the plaintiff(s) and defendant(s) must be citizens of different states, and the amount in controversy must exceed \$75,000. Neither requirement is satisfied here. Both parties are citizens of Keystone, where Eleanor is domiciled and Bombco has its sole place of business. Also, Eleanor is only seeking \$4800. Accordingly, there is no diversity jurisdiction.

Federal courts have jurisdiction over all cases "arising under" federal law. Federal question jurisdiction must be established on the face of the plaintiff's complaint, ignoring any defenses or counterclaims. Where federal law creates the plaintiff's cause of action, the case arises under federal law (subject to very narrow exceptions). Conversely, where state law creates the cause of action, the case normally arises under state law. However, the Supreme Court has recognized an exception where an element of plaintiff's state law claim turns on issue of federal law. In such cases, federal question jurisdiction is proper if the following conditions are met:

1. The claim necessarily raises a federal issue, i.e. the plaintiff relies on federal law to satisfy an element of the claim.
2. The federal issue is actually disputed.
3. The federal issue is substantial, i.e. its resolution in this case has significant implications for the federal system, beyond the specific interests of the parties.
4. Federal jurisdiction will not disturb the balance between the state and federal judicial systems, i.e. the federal court will not unduly intrude on an area normally regarded as a state responsibility.

In *Gable*, the Court held that there was a federal question under § 1331 where the plaintiff sued under state law to recover property seized and sold by the IRS. The plaintiff argued that the IRS had failed to give formal notice as required by federal law, rendering the seizure and sale invalid. The plaintiff's claim to the property under state law thus turned on the validity of the seizure and sale under federal law, an issue that was in dispute.

In contrast, in *Merrell Dow*, the Court held that there was no federal question under § 1331 where plaintiffs relied on federal drug labelling regulations to establish the defendant's negligence under state law. In that case, federal law did not itself establish the plaintiffs' rights or the defendant's duty. Rather, it served as evidence on the question of whether the defendant exercised the degree of care required under state tort law.

In this case, unlike in *Merrell Dow*, Eleanor is not using federal law merely as evidence of whether her employer satisfied a standard under state law. Rather, as in *Grable*, Eleanor is bringing a state law claim to enforce rights that derive from federal law. To decide the state wage claim, the court must determine whether the DCWFA applies, and whether Eleanor's job is properly classified as "Engineering Technician" with a \$25/hour wage under the DCWFA.

Because Eleanor's claim necessarily depends on an issue of federal law that is actually in dispute between the parties, the first two requirements are met.

Also in *Grable*, the Court held that the federal system had a substantial interest in resolving the issue of whether the IRS had satisfied the federal statutory requirements for seizure and sale of property in tax delinquency cases. In contrast, in *Merrell Dow*, the federal issue was not substantial. Federal law established an administrative mechanism to address regulatory non-compliance, and the state court's disposition of the plaintiff's tort claim would not substantially affect the federal interest in regulatory enforcement.

The significance of the federal issue in this case seems more like *Grable* than like *Merrell Dow*. Eleanor directly relies on the federal statute to establish her claim to an additional \$5/hour in wages. As in *Grable*, disposition of her claim will not only affect her individual rights, but will substantially impact the underlying federal policy behind the DCWFA. Unlike in *Merrell Dow*, Eleanor is seeking to vindicate a right established under the federal DCWFA, and federal jurisdiction over her claim will thus directly advance the federal interest underlying that statute.

The lack of an express private right of action under the DCWFA does not defeat federal question jurisdiction here. As in *Grable*, and unlike in *Merrell Dow*, the federal statute establishes a right of certain individuals to certain treatment. Permitting a plaintiff like Eleanor to sue in federal court will not undermine a Congressional policy decision to vest exclusive enforcement authority in a government agency.

Finally, exercising federal jurisdiction in this case would not disturb the federal-state court balance. As in *Grable*, it is likely to be only the rare WPCL suit that turns on an alleged violation of a federal statute. Typical WPCL suits will remain in state courts where they belong. The federal court can safely exercise jurisdiction here, vindicating the strong federal interest in enforcing the DCWFA, without inviting a flood of routine state law claims.

Accordingly, because this case necessarily raises a disputed question of federal law, and because this issue is one of substantial federal interest, with little risk of unduly intruding on matters of state responsibility, the exercise of subject-matter jurisdiction based on a federal question would likely be proper.