

After being fired, an executive from State A sued her former employer in state court in State B for \$100,000 in damages. The executive's complaint alleged that her former employer, a citizen of State B, violated a federal statute that prohibits gender discrimination in the workplace.

The employer timely filed a notice of removal in the federal court in State B and delivered copies to the state court in State B and the executive. Twenty-two days later, the executive filed a motion to remand.

How will the federal court likely rule on the executive's motion to remand?

- A. Deny the motion, because the federal court has subject-matter jurisdiction over the case.
- B. Deny the motion, because the plaintiff did not consent to the removal.
- C. Grant the motion, because it was timely filed.
- D. Grant the motion, because the employer is a citizen of State B.

### Explanation:

A plaintiff can choose to file certain lawsuits in state or federal court. When a suit is **filed in state court**, the **defendant can remove** the suit to the federal court located in the same district as the state court if the suit falls within the federal court's original (ie, subject-matter) jurisdiction. **Original jurisdiction** can arise from either:

- **diversity jurisdiction** – when the amount in controversy exceeds \$75,000 and the opposing parties are **citizens** of different states *or*
- **federal-question jurisdiction** – when a claim arises under the U.S. Constitution, a treaty, or federal law (as seen here).

Removal requires the consent of all other defendants (if any) but not the plaintiff (**Choice B**). The defendant must then file a notice of removal in federal court within **30 days** of receipt of the initial complaint or service of the summons—whichever period is shorter. A copy of the notice must also be delivered to the state court and the other parties.

The **plaintiff** can then **seek to return** the case to state court by filing a **motion to remand** in federal court within 30 days\* after the notice of removal is filed. But the plaintiff's motion will be denied when, as here, subject-matter jurisdiction exists and the requirements for removal are met (**Choice C**).

\*A motion to remand for lack of subject-matter jurisdiction does not need to meet this 30-day deadline and can be filed at any time.

**(Choice D)** The home-court advantage (ie, forum-defendant) rule prohibits removal when the federal court's original jurisdiction arises from *diversity* jurisdiction and a defendant is a citizen of the state in which the case was filed. Here, the State B federal court's original jurisdiction arises from *federal-question* jurisdiction, so the fact that the employer is a citizen of State B is irrelevant.

### Educational objective:

A defendant can remove a case to federal court if (1) the case falls within that court's original jurisdiction, (2) all other defendants consent to removal, (3) the defendant files a notice of removal in federal court within 30 days of receiving the summons or complaint, and (4) a copy of the notice is provided to the state court and other parties.

### References

- 28 U.S.C. § 1441 (removal requirements).
- 28 U.S.C. §§ 1446–1447 (removal procedures).

## Requirements for removal to federal court

