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Sullivan v. Oracle Corporation: California-based Employers Must Pay Nonresident Employees Overtime for Work in California

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On certification from the Ninth Circuit Court of Appeals, the California Supreme Court held that California's overtime provisions apply to nonresident employees of California-based employers who work in California for full days or weeks, and that violation of these provisions properly forms the basis of an Unfair Competition Law claim.

On June 30, 2011, the California Supreme Court issued a groundbreaking opinion which extended the application of California wage-hour law to the overtime claims of non-California employees of California-based employers. In *Sullivan v. Oracle Corporation*, --- P.3d ---, 2011 WL 2569530, the three specific questions the Court addressed were:

(1) Does the California Labor Code apply to overtime work performed in California by nonresident employees?

(2) Does Business and Professions Code section 17200 (also known as the Unfair Competition Law or "UCL") apply to the overtime worked in California by non-resident employees for California-based employers? and

(3) Does the UCL apply to overtime worked by out-of-state employees outside of California for a California-based employer if the employer failed to comply with the overtime provisions of the Fair Labor Standards Act ("FLSA")?

The court expressly limited its questions to the stipulated circumstances set forth in the *Sullivan v. Oracle* case, as certified by the Ninth Circuit.

The Court unanimously held that California Labor Code's overtime provisions apply to nonresident employees who work in California for full days or weeks for "California-based" employers. The Court then held that any California Labor Code-based overtime claims raised by such nonresidents may also serve as

a basis for claims under the UCL, thus extending the statute of limitations for such claims to 4 years. Finally, California's high court concluded that work performed in states other than California for which overtime is allegedly due under the FLSA cannot be the basis for claims under California's UCL if the only foundation for application of the UCL is the fact that the decision to classify the employee as exempt was made in California.

Background

The lawsuit was brought by three Oracle Corporation employees who worked as instructors, teaching customers how to use the company's products. The employees, residents of Arizona and Colorado, primarily worked in their home states, but occasionally traveled to California to conduct trainings. These named plaintiffs worked in California between 20 and 110 days during the three-year period preceding their lawsuit. Oracle's headquarters is located in California.

Oracle originally argued that its instructors were properly classified as exempt employees because they were teachers, and so no overtime pay was required. Oracle later reclassified the instructors and began paying overtime based on the laws of the employees' states of residence. Generally, this meant paying employees time and one half when they worked more than 40 hours in a week, as required by the Fair Labor Standards Act ("FLSA"). Neither Arizona, Colorado, nor federal law require payment of double time for hours worked over 12 in a day, and none of those jurisdictions require payment of time and half when employees work more than 8 hours in a single workday.

The lawsuit was pending in federal court. The Ninth Circuit originally held that California's Labor Code and the Unfair Competition Law applied to nonresident employees who worked days and weeks entirely in California, but it withdrew its opinion and requested that the California Supreme Court address those underlying state law questions.

The California Supreme Court Ruling

The California Supreme Court concluded that California's overtime laws apply to all employees working in California for a full day or week for California-based employers, regardless of their residence or principal place of work. Emphasizing the important public policy goals of "protecting the health and safety of workers and the general public," and commenting that California could have excepted nonresidents from its Labor Code had that been its intention, the Court explained that excluding "nonresidents from the overtime laws' protection would tend to defeat their purpose by encouraging employers to import unprotected workers from other states." Slip opn. at 6-7.

The Court rejected arguments that application of California wage law to visiting, non-resident employees would create impractical burdens on employers. According to the Court, this argument was primarily based on the assumption that if out-of-state employers must pay overtime under California law they would also be required to comply with every other technical aspect of California wage law. However, the Court expressly limited its holding to California's overtime provisions, refusing to extend its ruling in this matter to the entire Labor Code. The court specifically stated that treatment of an employee's vacation time or the content of an out-of-state business's pay stubs may not justify applying California law to the question at issue, but issued no holding as to what other provisions of the Labor Code may or may not be applicable to non-resident employees who temporarily work in California. The Court also expressly limited its decision to California-based employers, asserting that the burden on out-of-state businesses would be entirely conjectural because no out-of-state employer was a party to the litigation.

Once the Court determined that the California overtime laws did apply to California-based employers under the circumstances of the case, it easily determined that the UCL would apply to these violations, thus extending the statute of limitations to 4 years.

Finally, in the one portion of the case that is favorable to employers, the Court ruled that the UCL does not apply to claims under the FLSA for overtime work performed by nonresidents in other states. In the *Oracle* matter, the only tether to California law was the fact that the decision-making process to classify the plaintiffs as exempt from overtime under the FLSA occurred primarily at Oracle headquarters in California. The Court held that this was not a basis for allowing application of the UCL: the unlawful conduct was not the decision to adopt an erroneous classification policy, it is the alleged failure to pay overtime when due. The stipulated facts in *Oracle* did not provide a basis for finding that this occurred in California.

The Practical Effects of the California Supreme Court Decision

Despite the Court's rejection of arguments that application of California overtime laws to nonresident employees who sometimes work in California creates impractical burdens on employers, the decision will require California-based employers with out-of-state employees to rethink some of their compensation practices. The most obvious issue – and the one easiest to resolve – is that employers will need to set up a mechanism to track daily overtime for non-exempt employees who sometimes work in California.

What is much more complicated is the treatment of employees who are exempt under the FLSA, but may not be exempt under California law. California determines the exempt status of employees differently than federal law, using a quantitative as well as qualitative measure of job duties, among other things. An employee who, by way of example, is properly classified as exempt in Colorado may not be exempt under California law. Under this new ruling, plaintiffs are sure to argue that California-based employers are liable for payment of overtime wages, as well as for violation of California's unfair competition law, if non-California employees complete a day or more of work in California but do not meet the more rigorous requirements for exempt classification under California law. In addition, if the employer chooses to treat these employees as hourly workers when in California – paying them only for hours worked including overtime hours – this could arguably undermine their exempt status under the FLSA. Thus, employers should consider paying such employees on a salaried basis, and then pay them overtime for any hours over 8 in a day or 40 in a week, without offset for weeks in which they work less than 40 hours.

While the Court’s decision is very narrow, it also leaves many questions unanswered. For example, the Court did not determine (1) whether non California–based employers are required to pay their non-California employees according to the California Labor Code overtime provisions for time they work in California; (2) what other California Labor Code provisions, if any, will apply to non-California employees who work in California; (3) whether the UCL applies to out-of-state workers if the alleged underpayment of wages is made in California (i.e., the checks are cut in California); or (4) what constitutes a “California-based” employer—is it an employer like Oracle, which is headquartered in California, or does it extend to any entity licensed to do business in California? Given these unanswered questions, “California-based” employers may wish to consider issuing paychecks for their out-of-state employees from a non-California location.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors of this alert.

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