Labor & Employment Law Blog
Up-to-date Information on Labor & Employment
Presented By SheppardMullin

06/30/2011

New Case on Rules Governing Application of California Overtime Law to Non-California Residents

On June 30, 2011, the California Supreme Court handed down the decision in *Sullivan v. Oracle Corporation*, No. S170577 (June 30, 2011), tackling the issue of whether California wage law should apply to non-resident employees. By way of background, a class action settlement had eliminated all but a small portion of class claims concerning the exempt misclassification of Oracle "Instructors." The only remaining claims involved Instructors who were not California residents. While Oracle's headquarters are located in California, Oracle employed Instructors in 20 states, including California. The two claims at issue were claims for overtime arising (1) whether non-California resident Instructors who came to work in California for at least a full day or full week needed to be paid overtime under California rules governing daily and weekly overtime; and (2) whether Instructors who worked entirely outside California and were denied overtime under Fair Labor Standards Act ("FLSA") rules could recover FLSA overtime under the California Unfair Competition Law ("UCL"), Bus. & Prof. Code, § 17200 et seq.

Plaintiffs pled the above claims in a complaint filed in the United States District Court for the Central District of California. The Central District granted Oracle's motion for summary judgment based on stipulated facts. On appeal, the Ninth Circuit affirmed in part and reversed in part, holding that the Labor Code and the UCL applied to plaintiffs' claims for overtime for days and weeks worked entirely in California. The Ninth Circuit rejected, however, Plaintiffs argument that they

could use the UCL to borrow standards in the FLSA and sue on behalf of employees who worked outside California. Subsequently, however, the Ninth Circuit withdrew its opinion and certified questions for the California Supreme Court to resolve as a matter of state law.

The California Supreme Court did not address the merits of whether the Instructors' jobs were exempt, but limited the discussion to questions of whether California law applied to the particular claims of the out-of-state residents. To answer whether the Labor Code applies to overtime work performed for a California-based employer in California by a nonresident employee, the California Supreme Court undertook a two-step analysis. It first addressed whether the Legislature intended the Labor Code to apply to work performed by non-residents in California. It then separately addressed whether there were any choice-of-law reasons that would cause California to defer to conflicting rules of other states that would ordinarily govern residents of those states.

On the first point, the Court strongly declared that the Labor Code applies to any employees who perform work in California. It mostly derived this rule from pronouncements within Labor Code section 1171.5, which was enacted to ensure that illegal immigrants working in California were afforded protections of the Labor Code. The Court reasoned that if people who were residents of foreign countries working here illegally were protected by the Labor Code, it must also follow that residents of other states had similar protections. The Court also interpreted previous precedents that Oracle relied upon (*e.g., Tidewater Marine Western, Inc. v. Bradshaw*) as not addressing the question at hand.

Standing alone, this analysis would apply the entire Labor Code to any employee who set foot in California for any length of time. However, the Court's choice of law analysis scaled back the impact of this first ruling. The Court recognized that other states have competing interests with California that need to be weighed in applying California law to their residents. In this case, involving employees of a California-based corporation and solely limited to the issue of payment of daily

and weekly overtime, the Court found Arizona and Colorado's interests to be minimal. Although those states have their own wage and hour laws, the Court found no evidence that those states had expressed a strong preference to have their overtime laws apply to their citizens when those citizens worked out of state (Indeed, Arizona does not even have a state overtime law). The Court explained, however, that it would not reach, and that the same conclusion might not apply to, other sorts of wage and hour laws under other factual scenarios:

> "While we conclude the applicable conflict-of-laws analysis does require us to apply California's overtime law to full days and weeks of work performed here by nonresidents, one cannot necessarily assume the same result would obtain for any other aspect of wage law. California, as mentioned, has expressed a strong interest in governing overtime compensation for work performed in California. In contrast, California's interest in the content of an out-of-state business's pay stubs, or the treatment of its employees' vacation time, for example, may or may not be sufficient to justify choosing California law over the conflicting law of the employer's home state. No such question is before us."

The Supreme Court also stated that the same rule might not even apply on different facts involving an out-of-state employer. Of course, this leaves employers in the dark about such issues as whether California wage statement laws apply to employees who work in California for a day, but courts frequently address narrow issues and leave specific disputes for another day.

Because the Court found that failure to pay non-residents overtime pursuant to California's laws constituted a violation of California's overtime law, the Court also found that the UCL could be used to recover unpaid overtime worked in California. This holding was not particularly new, as the Court already held more

than a decade ago that unpaid overtime could be recovered under the UCL as "restitution."

The Court then turned to the next issue, whether the UCL applies to overtime work performed *outside* of California for a California-based employer by non-resident employees, if the employer failed to comply with the overtime provisions of the FLSA. The Court assumed as a stipulated fact that the decision to classify Instructors as exempt was made in California. Attempting to restate time-barred FLSA claims as UCL claims, plaintiffs argued that when an act of "unfair competition" originated from California, even employees residing and working in other states who were impacted by the unfair competition could sue under the UCL.

The Court, however, properly recognized that a claim for failure to pay overtime differs from an assertion of an erroneous classification system. What is unlawful is to fail to pay an employee overtime when overtime is owed. As the Court put it: "But for an employer to adopt an erroneous classification policy is not unlawful in the abstract" (citing with approval *Walsh v. IKON*). Because the record indicated that the employees at issue worked out of state, and nothing indicated the employees were paid in California, there was simply no "unlawful practice" in California that could support a UCL claim. Accordingly, in a typical case where a California company is alleged to have misclassified out-of-state employees, this case almost certainly will preclude suing on behalf of those out-of-state employees under the UCL, so long as payments were not made in California.

The Court's statement regarding "misclassification in the abstract" not being an unlawful practice has broad implications for class actions. One main theory for certifying a misclassification class is that the employer made a classification decision as to the whole class by making everyone in a specific job exempt or non-exempt. While recent precedent has scaled back that argument (*e.g., Vinole v. Countrywide*) "uniform classification" has still been recognized as a legitimate factor to consider in deciding whether to certify a class. Employers now have a

stronger argument that the "uniform classification decision" is not an unfair practice or unlawful act, and thus cannot rationally serve as the "common issue" to support certification (especially given the *Wal-Mart v. Dukes* decision's recent reformulation of the "common issue" requirement).

Similarly, this case reveals that the California Court of Appeal's finding in *Bell v. Farmers Insurance Exchange* that the employer had uniformly misclassified all the insurance adjusters as exempt was not a finding of liability. Liability arose only as to the class members who worked overtime and did not receive overtime pay. This should strengthen the argument that using "statistical sampling" to determine average overtime for a uniformly misclassified class really is using sampling to decide both liability and damages, since the employer is not liable at all to employees in the class who worked no overtime.

In light of this decision, California-based employers should take care to pay employees in California under California rules, but should not feel compelled to immediately apply all Labor Code provisions to those same employees. Should you have any questions regarding the application of employment or labor law to your particular situation, please contact a labor and employment attorney at Sheppard Mullin for guidance.

Authored by Sheppard Mullin's Labor & Employment Practice Group.