Welcome to California: The Captain Has Turned on the Overtime Sign

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The state Supreme Court's decision in *Sullivan v. Oracle Corp.*, 2011 DJDAR 9891 (June 30, 2011) shot a tremor down the halls of companies sending employees to work in California. The ramifications for wage-and-hour law that may stem from this decision will have a significant impact on any industry doing business in California. And particularly thorny questions arise for the airline and hospitality industries.

In *Sullivan*, instructors for Oracle Corp., a California software company, claimed they were entitled to California's generous overtime laws during their business trips to the state. The pivotal issue was whether non-California resident instructors who came to work in California for at least a full day or full week should be paid overtime under state law. It goes without saying that California overtime pay is more generous than the instructors' home states of Arizona and Colorado.

California overtime law requires that employers pay time and one-half to employees working more than eight hours in one day or 40 hours in a week, and for the first eight hours worked on the seventh consecutive day of work in a workweek. And employers must pay double to employees working in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work.

The Court essentially declared that the Labor Code applies to any employees who perform work in California. It based its decision upon pronouncements within Labor Code Section 1171.5, which was enacted to ensure that illegal immigrants working in California were afforded Labor Code protections. The Court reasoned that if the

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Labor Code protects residents of foreign countries who are working here illegally, then legal residents of other states must have similar protections - at least as to overtime pay. As the Court explained: "That the overtime laws speak broadly, without distinguishing between residents and nonresidents, does not create ambiguity or uncertainty."

But, if full wage-and-hour protections for illegal immigrant workers means overtime protections for out-of-state workers, then surely it implies full wage-and-hour protection to out-of-state workers as well. Still, even if out-of-state workers are afforded fully protection under California law, significant questions remain.

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For example, the decision leaves employers in the dark as to whether California wage statement law (Labor Code Section 226) applies to employees who work in California for a day. This presents unique complications for employers in the airline, hotel and restaurant industries, to name a few. Consider the flight attendant who regularly works on flights in and out of California. Will he have to land on California soil to initiate his Labor Code protection, or will taking a breath within California's airspace suffice? The *Sullivan* case may necessitate an electronic timecard with global satellite positioning capabilities. Or perhaps the flight attendant will have to map out his flight before work, and calculate at what time the airplane will breach California's boarder. Or maybe he will just clock out mid-flight once he's reached his eight-hour time limit, and patrons will have to get their own peanuts: "Welcome to California - the captain has turned on the 'self-serve sign.'"

But the Supreme Court also stated that the same rule might not even apply on different facts involving an out-of-state employer. Yet, according to the 9th U.S. Circuit Court of Appeals' recent decision in *Narayan v. EGL Inc.* (2010) 616 F.3d 895, even out-of-state companies that operate in California must adhere to California's labor laws.

In *Narayan*, EGL Inc. engaged in the business of air and ocean freight delivery services, and operated a network of 400 facilities in over 100 countries. Three residents of California drove freight pick-up and delivery trucks for EGL in California. The drivers signed agreements stating that they were independent contractors, which included a provision designating Texas law to govern the contract. The drivers claimed that they were denied California-mandated overtime pay, expense reimbursements, and meal periods.

The court reasoned that the Texas choice-of-law provision only related to the terms of the contract itself. Indeed, the drivers' claims did "not arise out of the contract, involve the interpretation of any contract terms, or otherwise require there to be a contract." Rather, the drivers' claims concerned entitlement benefits under the California Labor Code. Whether the drivers were entitled to those benefits turned on whether they were EGL employees. The court reversed and remanded, finding that the drivers were employees under the California Labor Code. Considering the Supreme Court's decision in *Sullivan*, the lower court deciding the remanded *Narayan* case will surely apply the California Labor Code to the drivers' claims.

Thus, although the *Sullivan* court cautioned that "one cannot necessarily assume

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the same result would obtain for any other aspect of wage law," in view of *Narayan* and now *Sullivan*, a court would be hard-pressed not to. Indeed, the *Sullivan* court reasoned that California had "important public policy goals, such as protecting the health and safety of workers and the general public, protecting employees in a relatively weak bargaining position from the evils associated with overwork, and expanding the job market by giving employers an economic incentive to spread employment throughout the workforce." Surely, similar reasoning will apply to other aspects of wage-and-hour law.

According to the Court, however, this assumption is "of doubtful validity." It reasoned that not to follow California overtime law would severely impair the state's public policy goals, whereas the competing states' interests would be impacted "negligibly or not at all." That's because Colorado overtime law expressly does not apply outside the state's boundaries, and Arizona has no overtime law.

But, a problem may arise as to other aspects of wage-and-hour law where the other states have conflicting laws and policy interests. For instance, in this case, Colorado law could have hypothetically mandated that its overtime constraints apply even when a worker ventures out of state - to attract companies. The Court would have had to weigh California's public policy in protecting workers against Colorado's express interest in protecting its businesses' profit margins. Such an argument, however, strikes against the very root of wage-and-hour protections - to prevent worker exploitation for larger business profit. And so, it is perhaps only a matter of time before any company doing business in California will be subject to all of the state's wage-and-hour laws.

Ironically, Oracle offers an extensive online curriculum that is, as they say, "comparable to our traditional in-class training without the need for expensive travel." This option was meant for students spread throughout the world. But now, Oracle may want to consider flipping the format on its head - for instructors who would otherwise have to travel into California. Indeed, all employers may reconsider the benefits of video-conferencing.

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