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CALIFORNIA EMPLOYERS MUST COMPLY WITH STATE OVERTIME RULES WITH NON-RESIDENTS DIRECTED TO WORK WITHIN CALIFORNIA

In a disappointing result for employers with potentially far-reaching consequences, the California Supreme Court ruled in *Sullivan v. Oracle Corporation* that California employers must apply state overtime rules to out-of-state employees who perform work within California. Oracle employed the plaintiffs, two residents of Colorado and one Arizona resident, as instructors who trained customers to use Oracle products. They worked mainly in their state of residence but also in California and several other states. Originally, Oracle trainers were classified as exempt from overtime. Oracle then reclassified the trainers as non-exempt after the filing of a federal class action lawsuit alleging that trainers were improperly classified under the Fair Labor Standards Act ("FLSA"). The three plaintiffs participated in the class settlement and were paid overtime for the three years allowed under federal law. However, not satisfied, the three asked the federal court to award additional overtime pay under California law. (Unlike the FLSA, California law requires daily overtime pay for hours worked in excess of eight hours in a day. The FLSA requires overtime pay only for hours in excess of 40 in a week. Also, California has a longer four-year statute of limitations for overtime claims under its unfair business practices law, Business and Professions Code § 17200 ("Section 17200").)

The federal court asked the California Supreme Court to opine whether California's overtime laws applied to non-resident employees of a California business for work performed **within** California, and for work performed **outside** the state. The supreme court ruled that California overtime law applied to such work performed within the state, but not work performed outside California. Regarding a nonresident's work inside the state, the state legislature has expressed a strong public policy, based upon health and safety concerns, to regulate overtime hours for work performed within the state, whether such work was performed by residents or non-residents. Oracle had urged that applying California wage laws to visiting, nonresident employees imposed impractical burdens on employers, such as forcing employers to apply not only California overtime rules but also laws governing paystub content, meal and rest breaks, travel time, vacation pay, and the timing of pay checks to non-California employees. Rejecting the argument, the court explained that these additional issues were not before the court, and that California's strong public interest in governing hours of work may or may not apply to these other wage laws. According to the court the decision only addressed plaintiffs' claim for alleged unpaid overtime, and allowed them to pursue the claim for work performed inside California. The court also ruled that these plaintiffs could sue under Section 17200 for such unpaid overtime and take advantage of the law's longer four-year statute of limitations.

However, the court rejected plaintiffs' argument that California's overtime law should also apply to non-residents' work performed outside of California for a California business. There was no basis to conclude that the state legislature had intended California's overtime laws to apply to non-residents' work performed outside the state. Specifically, the non-resident plaintiffs were not allowed to use Section 17200's four-year limitations period as the basis to sue Oracle for additional alleged FLSA violations outside of California.

The court made clear that its decision only applied to California employers that instructed non-resident, non-exempt employees to work within the state. However, the decision raises several more questions. For instance, non-California employers who send employees to work inside California may also need to comply with the state's overtime laws for work performed within California. Without expressly deciding the issue, the court signaled as much, opining that "a company that conducts business in numerous states ordinarily is required to make itself aware of and comply with the law of the state in which it chooses to do business." If California law applies to these out-of-state employers, it is less clear whether California's stricter exemption definitions apply or whether FLSA (or the laws of another state) apply to determine the employee's status as exempt or non-exempt from overtime. In an abundance of caution, employers should consider applying California exemption definitions and overtime laws in determining overtime compensation for a non-resident employee's work performed within the state.

An additional question left unanswered is which of California's other wage and hour laws apply, if any, to a non-resident employee's work performed within the state. The court opined that the state's strong interest in health and safety justified extension of the overtime rules to non-residents for work performed within the state. Arguably, the same health and safety concerns may support application of meal and rest break rules and limits on travel time to non-residents performing work in California. Accordingly, employers should consider applying these health-and-safety rules to non-resident, non-exempt employees sent to work in California. Conversely, such strong public interest concerns appear absent with respect to technical rules governing the content of pay stubs, and the timing of paychecks including final pay. Accordingly, for the time being, employers likely should not have to comply with these technical pay rules for non-resident employees who perform work within California. These and other open issues will have to be left to future litigation or legislative developments for definitive resolution.

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