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Sullivan v. Oracle: Non-California Residents Working in California for California-Based Employers Are Subject to California Daily Overtime Requirements

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In an opinion with significant implications for California-based employers, and potentially for non–California-based employers, the California Supreme Court has ruled that the daily and weekly overtime requirements of the California Labor Code apply to work performed in California for California-based employers by nonresident employees. In a unanimous opinion in *Sullivan v. Oracle Corporation*, issued on June 30, the court held that Oracle, a California employer, must pay its out-of-state employees according to California's overtime rules if and when those employees perform overtime work within California. The court also held that California's Unfair Competition Law (UCL), which has a four-year statute of limitations, applies to the failure to pay overtime for work performed in California by nonresidents, but does not apply to the failure to pay overtime under the federal Fair Labor Standards Act (FLSA) for work performed outside of California.

The court left open the question of whether the California Labor Code and UCL extend to non-California employers whose employees may occasionally perform work in California. The court also did not address whether any of the other numerous and unique California wage and hour laws apply to nonresident employees performing work in California.

Background

Oracle, which is headquartered and has its principal place of business in California, employed "instructors" throughout the country to train the company's customers in the use of its software. These instructors did not have a fixed location of work; they could be asked to perform work in any state. For a number of years, Oracle classified its instructors as exempt from state and federal overtime provisions. In 2003, Oracle reclassified those instructors who lived in California as nonexempt and began paying them overtime under the California Labor Code, including "daily" overtime. In 2004, Oracle reclassified its instructors who lived outside of California as nonexempt and began paying them weekly overtime under the FLSA.

The three plaintiffs who brought suit were residents of Arizona and Colorado. They had worked as instructors for Oracle in their home states, but occasionally (anywhere from five to 36 days per year) trained customers in California. The plaintiffs sued Oracle in California state court to recover daily overtime for the days they worked more than eight hours in California. Specifically, the plaintiffs alleged that Oracle violated California Labor Code Section 510(a) by failing to pay overtime for work performed in excess of eight hours a day while in California. They also alleged that this failure was an

unfair business practice and violated California's UCL, set forth in Business & Professions Code Section 17200, et seq. (Section 17200). The plaintiffs also alleged a separate violation of Section 17200 on the ground that Oracle's alleged failure to pay overtime for work performed *outside* of California in violation of the FLSA also constituted an unfair business practice under California law.

Oracle removed the case to the District Court for the Central District of California. The district court granted summary judgment for Oracle and held that California's Labor Code provisions did not apply to nonresidents who only periodically performed work in California. The district court concluded that applying the California Labor Code to work performed in California by nonresidents would violate the Due Process Clause of the Fourteenth Amendment. The plaintiffs appealed, and the Ninth Circuit reversed as to the plaintiffs' overtime claims for work performed in California. Oracle petitioned for rehearing. In response, the Ninth Circuit withdrew its opinion and asked the California Supreme Court to decide the underlying questions of California law, on which the Ninth Circuit had found no directly controlling precedent. In its decision, the California Supreme Court answered the following three questions, which had been certified from the Ninth Circuit:

1. Does the California Labor Code apply to overtime work performed in California for a California-based employer by out-of-state plaintiffs in the circumstances of this case, such that overtime pay is required for work in excess of eight hours per day or in excess of 40 hours per week?

2. Does Section 17200 apply to the overtime work described in question one?

3. Does Section 17200 apply to overtime work performed outside California for a California-based employer by out-of-state plaintiffs in the circumstances of this case if the employer failed to comply with the FLSA's overtime provisions?

California Labor Code's Overtime Provisions Apply to Work Performed by Nonresident Employees in California for a California-Based Employer

In answering the first question in the affirmative, the court noted that California's overtime laws apply by their terms to all employment in the state, without reference to the employee's place of residence. The court held that the lack of distinction between residents and nonresidents did not create ambiguity or uncertainty, as the legislature specifically chose not to create an exception for nonresidents despite authorizing exemptions on a variety of other bases. The court also held that the California overtime statute is "neither improper nor capricious," pointing to the statute's public policy goals of protecting the health and safety of workers and the general public, preventing overwork, and expanding the job market.

The court relied upon its earlier decision in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996), to support its holding that California's overtime law can apply to nonresidents. In *Tidewater*, the court suggested that California law might follow California resident employees of California employers who leave the state "temporarily . . . during the course of the normal workday" and California law might not apply to nonresident employees of out-of-state businesses who "enter California temporarily during the course of the workday." *Id.* at 578. By contrast, in *Sullivan*, the plaintiffs claimed overtime only for entire days and weeks worked *in* California, and they did not work for an out-of-state business. The court noted that nothing in *Tidewater* suggested that a nonresident employee, especially an employee of a California-based employer such as Oracle, could enter the state for entire days or weeks without the protection of California law.

Second, the court applied a conflict-of-laws analysis. The court held that although California overtime

law differs from that of the plaintiffs' home states (Colorado and Arizona), there was no "true conflict" because neither Arizona nor Colorado had asserted an interest in regulating work performed by their residents in other states (Arizona has no overtime law at all, and Colorado's overtime law purports to govern only work performed within the boundaries of the state of Colorado).

Finally, the court held that even if a genuine conflict existed, California's interests would be more impaired by the failure to apply California law than would the interests of the other states involved. To permit nonresidents to work in California without the protection of California overtime law would sacrifice the state's important public policy goals of protecting health and safety and preventing overwork, and would threaten California's interest in expanding the job market by encouraging employers to utilize the services of lower-paid temporary employees from other states rather than California employees. In contrast, not applying the overtime laws of Colorado and Arizona would negligibly impact those states' interests, if at all (as Colorado's law expressly does not apply outside the state's boundaries and Arizona has no overtime law).

The UCL Applies to Labor Code Violations Occurring in California

The court answered the second question posed by the Ninth Circuit by reaffirming that the failure to pay required California overtime compensation *does* fall within the UCL's definition of an unlawful business act or practice. Accordingly, the court held that Section 17200 applies to the overtime work described in question one.

The UCL Does Not Apply to Claims Under the FLSA for Overtime Work Performed by Nonresidents in Other States

In determining whether the UCL also applies to FLSA claims (i.e., claims for overtime work performed outside of California), the court found that neither the language of the UCL nor its legislative history provided any basis for concluding the legislature intended the UCL to operate extraterritorially.

In finding that it would be impermissible to apply the UCL to FLSA claims by nonresidents for work performed in other states, the court noted that although the UCL reaches to any unlawful business act or practice committed *in* California, the only instance of relevant conduct that occurred in California was Oracle's initial decision to classify the employees as exempt from state and federal overtime requirements. The court found that the failure to pay overtime when due, not the classification of an employee as exempt, is the conduct that creates liability under the FLSA. Noting that the UCL might conceivably apply to the plaintiffs' claims had their wages been paid or underpaid *in California*, the court held that in the circumstances of the case, Section 17200 does not apply to overtime work out-of-state residents performed *outside* California even for a California-based employer.

Practical Considerations and Unresolved Questions for Employers

Based upon the ruling in *Sullivan*, California-based employers that employ out-of-state residents who perform work in California should reexamine their time-recording and overtime practices and policies to ensure that such nonresident employees receive daily overtime pay under California law for days and weeks worked in California. California-based employers should record the daily hours that nonexempt, nonresident employees work in California and pay overtime at the applicable rate for any hours worked in excess of eight hours per day in California (i.e., time and one-half for work hours between eight and 12 and double time for work hours in excess of 12 in one work day).

Because the court declined to address the applicability of California's numerous other wage and hour laws to nonresident employees, it left open the question of whether California's unique requirements regarding, for example, meal and rest periods, wage statements, travel time, vacation time, and the timing of wage payments upon termination would similarly apply to nonresidents. The court said it was not clear that it would reach the same conclusion as to such laws.

Given the questions the California Supreme Court answered and left unanswered, the *Sullivan* decision will likely spawn a new wave of litigation against employers fueled by California's employee-friendly wage laws. Plaintiffs may use the *Sullivan* decision to argue that some or all of California's other wage and hour laws apply to nonresidents working in the state. California-based employers that have nonresident employees who perform work in California should consider reviewing the frequency and extent to which their nonresident employees perform work in California in order to assess the potential risks of not applying California's other wage and hour laws (such as meal and rest periods) to nonresidents working in California.

The court also limited its holding to California-based employers, and left unresolved whether its decision would apply equally to non–California-based employers. Such employers also should conduct a risk assessment concerning the potential impact of the *Sullivan* decision with respect to their nonexempt employees who perform work in California.

Please contact any of the following Morgan Lewis attorneys for more information about the decision discussed in this Morgan Lewis LawFlash, and the implications of this decision on your company's policies:

Irvine

Carrie A. Gonell	949.399.7160	cgonell@morganlewis.com
Barbara J. Miller	949.399.7107	barbara.miller@morganlewis.com

Los Angeles

John S. Battenfeld	213.612.1018	jbattenfeld@morganlewis.com
Robert Jon Hendricks	213.612.2692	rhendricks@morganlewis.com

Palo Alto

Carol R. Freeman	650.843.7520	cfreeman@morganlewis.com
Daryl S. Landy	650.843.7561	dlandy@morganlewis.com
Melinda S. Riechert	650.843.7530	mriechert@morganlewis.com

San Francisco

Rebecca Eisen	415.442.1328	reisen@morganlewis.com
Eric Meckley	415.442.1013	emeckley@morganlewis.com

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