CALIFORNIA EMPLOYMENT LAW UPDATE

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Ninth Circuit Holds that California Labor Laws Apply to Work Performed Within California by Nonresident Employees

Three employees of the Oracle Corporation, instructors who trained customers to use Oracle software, sued the company for failure to pay overtime wages. The plaintiffs were not residents of California during the employment period in question, but performed some work within the state. The plaintiffs brought three claims against Oracle seeking compensation for unpaid overtime wages.

The plaintiffs' first claim alleged Oracle violated California Labor Code section 510(a), which requires employers to pay overtime wages to employees who work more than eight hours in one day or more than forty hours in one week. The plaintiffs claimed they were entitled to overtime pay under Labor Code section 510(a) for work they performed while in California. The second claim charged Oracle with violating California's Unfair Competition Law, which prohibits unlawful business practices. Cal. Bus. & Prof. Code § 17200 *et seq*. ("Section 17200"). The Section 17200 violation was based upon Oracle's alleged failure to comply with Labor Code section 510(a). The third claim, brought by two of the three plaintiffs, alleged a different violation of Section 17200, predicated on violations of the Fair Labor Standards Act ("FLSA"). Plaintiffs alleged that Oracle failed to pay for overtime work performed throughout the United States.

The district court granted summary judgment to Oracle on all three claims. On the first and second claims, the court held that California's Labor Code (and, derivatively, Section 17200) does not apply to nonresidents who work primarily in other states. Further, the court held that if the Labor Code were construed to apply to such work, it would violate the Due Process Clause of the Fourteenth Amendment. On the third claim, the court held that Section 17200 does not apply to work performed outside California and to the extent the claim involved work performed in California, the claim failed for the same reasons that plaintiffs' second claim, violation of Section 17200, failed.

The United States Court of Appeals for the Ninth Circuit reversed the district court's grant of summary judgment on plaintiffs' first two claims. The Ninth Circuit held that the California Labor Code is intended to apply to work performed in California by nonresidents. It cited the California Supreme Court decision in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 565, wherein the court concluded that California's employment laws govern *all* work performed within the state, regardless of the residence or domicile of the employee.

Relying upon *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, the Ninth Circuit also concluded that applying the California Labor Code to nonresidents would not violate the Due Process Clause. In *Phillips Petroleum Co.,* the U.S. Supreme Court held that "[f]or a State's substantive law to be

selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of law is neither arbitrary nor fundamentally unfair." *Id.* at 818. Noting that it is a rare case in which a state court is constitutionally forbidden to apply its own state's laws, the court determined that the contacts creating California interests were sufficient to permit the application of California's Labor Code. The employer, Oracle, had its headquarters and principal place of business in California, the decision to classify plaintiffs as teachers and to deny them overtime pay was made in California, and the work in question was performed in California.

As to the third claim, the Ninth Circuit agreed with the district court that Section 17200 does not have power outside of California, and therefore, a Section 17200 claim predicated on violation of a federal law outside of California is barred.

The *Sullivan* decision holds that all employees who would otherwise qualify for overtime compensation, regardless of the state of their residence, are entitled to overtime compensation under California law if they perform the work at issue in California. In light of *Sullivan*, employers should understand that nonresident, non-exempt employees performing work in California are protected by the California Labor Code with respect to work performed within the state, including wage and hour laws and meal and break period requirements. Employers that have non-exempt employees outside of California perform work in California should audit their practices to ensure compliance with California laws, including meal and rest break practices, overtime policies and practices, and time clock, time card, and payroll practices.

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