

Nonresident-Employees Working in California Entitled to Overtime under State Law, Ninth Circuit Rules

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Nonresidents of California are entitled to overtime pay under California law for work performed in California, the U.S. Court of Appeals for the Ninth Circuit has ruled, following the California Supreme Court's responses to its questions on state law. *Sullivan v. Oracle Corp.*, 2011 U.S. App. LEXIS 24625 (9th Cir. Dec. 13, 2011). The Ninth Circuit reversed summary judgment in favor of the employer on claims for unpaid overtime under the California Labor Code ("Labor Code"), as well as on claims under the California Unfair Competition Law ("UCL"), which were predicated on the Labor Code violations. However, the Court held that the UCL did not apply to alleged violations of the federal Fair Labor Standards Act occurring outside of California.

Background

Software company Oracle Corporation employs workers to train its customers in the use of its products. It initially classified these workers as teachers not entitled to overtime pay under either the FLSA or the Labor Code, but by 2004, it had reclassified all of its trainers and were paying them overtime under the FLSA and the Labor Code.

Donald Sullivan worked for the employer as a trainer from 1998 to 2004. He lived outside of California, but performed some work in California. Sullivan brought a class action on behalf of himself and others for violations under the Labor Code and the UCL, based on claimed Labor Code violations, for alleged unpaid overtime for the work performed in California. He asserted a second UCL claim, based on the employer's alleged failure to pay overtime for work performed outside of California in violation of the FLSA.

The trial court granted summary judgment in favor of the employer and dismissed Sullivan's claims. Sullivan appealed.

Questions to California Supreme Court and its Responses

The Ninth Circuit certified the following questions to the California high court because of the scarcity of relevant California case law:

- Does the Labor Code apply to overtime work performed in California for a California-based employer of out-of-state employees so that overtime pay is required for work in excess of eight hours per day or in excess of 40 hours per week?
- Does the UCL apply to the overtime work described in the first question?
- Does the UCL apply to overtime work performed outside of California for a California-based employer of out-of-state employees if the employer failed to comply with the overtime provisions of the FLSA?

The California Supreme Court answered the first two questions in the affirmative, concluding that the Labor Code and the UCL applied to overtime work performed in California by nonresidents. However, it said, the UCL did not apply to claims based on an employer's alleged failure to pay overtime for work performed outside of California in violation of the FLSA.

Ninth Circuit Opinion

In light of the California Supreme Court's responses, the Ninth Circuit rejected the employer's argument that the Labor Code did not apply to work performed in California by nonresidents. It also rejected the company's arguments based on federal constitutional law. Significantly, in response to the company's Due Process argument, the Court found the employer's contacts with the state create interests "clearly sufficient to permit the application of California's Labor Code" — the employer had its headquarters and

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principal place of business in California, the decision to classify Sullivan as a teacher and to deny him overtime pay was made in California, and the disputed work was performed in California.

Finally, the Court found the California Supreme Court's determinations regarding Sullivan's UCL claims were conclusive. Therefore, Sullivan's UCL claims based on the alleged Labor Code violations for overtime work performed by nonresidents could proceed, while the UCL claims based on the employer's alleged failure to pay overtime for work performed outside California in violation of the FLSA failed.

California employers and employers with mobile, multi-state workforces should consider consulting employment counsel regarding the impact this decision may have on their wage payment and overtime practices for workers who work and live in different states. Jackson Lewis attorneys are available to assist with a review of your wage and hour practices.

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