Federal Decision Awards Overtime to Non-Residents Performing Work in California

Insights
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A federal appeals court recently handed down a significant decision addressing the application of the overtime provisions of California's Labor Code to work performed in California by non-resident employees. The case has important consequences for employers who hire non-residents to perform work in California *Sullivan v. Oracle Corporation.*

Background
Oracle Corporation, a large software company, employs hundreds of workers to train Oracle customers in the use of its software. Oracle calls these employees "Instructors," and requires them to travel to destinations within the United States away from their city of domicile for the purpose of performing work for Oracle. For a number of years, Oracle classified these Instructors as "teachers" who are exempt from the overtime provisions of California's Labor Code (Labor Code) and the federal Fair Labor Standard Act (FLSA).

In 2003, Oracle reclassified its California-based Instructors and began paying them overtime under the Labor Code. Oracle's reclassification of its Instructors may have been prompted by a 2003 class action in federal district court in California brought by Instructors claiming that Oracle misclassified them under the Labor Code and the FLSA. The class action was settled, but excluded from the settlement current and former Instructors who may have worked in California when they were not a resident of California.

In *Sullivan*, three non-residents of California who performed some of their work as Instructors in California, brought a would-be class action in California state court against Oracle seeking damages under the Labor Code. Oracle eventually had the case removed to federal district court on jurisdictional grounds. The Instructors brought three claims against Oracle. Through their first two claims, the employees alleged that Oracle failed to pay overtime for work performed in California to Instructors domiciled in other states who worked complete days in California.

The district court dismissed all of the claims. On the first and second claims, the district court held that the Labor Code does not apply to non-residents who work primarily in other states. The employees appealed the district court's ruling to the U.S. Court of Appeals for the 9th Circuit. The

Court of Appeals addressed two questions: 1) whether the overtime provisions of the Labor Code apply to work performed in California by non-residents; and 2) if the Labor Code does apply to such work, whether its application violates the United States Constitution.

The Labor Code Applies To Work Performed In California By Non-Residents

The Court of Appeals unequivocally held that the overtime provisions of the Labor Code are clearly intended to apply to work done in California by non-residents. The Court of Appeals based its ruling on the plain language of the overtime provisions of the Labor Code, the public policy behind such provisions, and the seminal case of *Tidewater Marine Western, Inc. v. Bradshaw*. In *Tidewater Marine Western, Inc.*, the California State Supreme Court held that California's employment laws implicitly extend to employment occurring within California's state law boundaries.

The 9th Circuit also held that California has an interest in the effect compensation for non-residents working in California will have on the compensation of California residents. The Court reasoned that if a California employer may avoid the requirements of the Labor Code by simply hiring non-residents, California residents will be substantially disadvantaged in the labor market by the cheaper labor that will thereby be made available to California employers.

The Labor Code's Application Does Not Violate The U.S. Constitution

Oracle also argued that the Labor Code should not be applied to employees' work in California because to do so would violate the Due Process Clause and the Dormant Commerce Clause of the United States Constitution. The 9th Circuit rejected both arguments.

The Due Process Clause essentially prevents a state's substantive law from being applied in an arbitrary or fundamentally unfair way. The Court of Appeals held that applying the Labor Code to employees' work in California was neither arbitrary nor fundamentally unfair. The Court noted that Oracle is headquartered and has its principal place of business in California, the decision to classify Instructors as "teachers" and to deny them overtime pay was made in California, and the work in question was performed in California.

The Dormant Commerce Clause prohibits a state from passing legislation that improperly burdens or discriminates against interstate commerce. The Court determined that applying the Labor Code to work in California did not improperly burden or discriminate against interstate commerce because California has chosen to treat non-residents equally with its own residents.

Our Advice

As a federal decision,the *Sullivan* decision is not legally binding on California state courts as "precedent," but state courts nonetheless are permitted to adopt the decision as "persuasive." Accordingly, California employers that hire non-residents to perform work in California should, at a minimum, abide by the overtime provisions of the Labor Code and pay those individuals for all overtime hours worked (unless an overtime exemption applies under California's more stringent requirements).

As an additional precaution, California employers that hire non-residents to perform work in California should also abide by all other applicable provisions of the Labor Code. In this age of increasing and costly wage-and-hour lawsuits, an ounce of prevention is worth a pound of cure.