Federal Court Withdraws Decision Awarding Overtime to Non-Residents Who Work In California

Insights
4.01.09

(California Wage/Hour Update, No. 2, April 2009)

As we reported in our last issue (California Wage/Hour Update, No. 1, January 2009), the U.S. Court of Appeals for the 9th Circuit recently ruled that the overtime provisions of California's Labor Code apply to work performed in California by non-resident employees. *Sullivan v. Oracle Corporation.*

In a surprising move, the 9th Circuit recently withdrew its decision and requested the California Supreme Court to address the issue.

Background
Oracle, the large software company, employs hundreds of workers to train its customers in the use of its software. Oracle calls these employees "Instructors," and requires work-related travel to destinations away from their city of domicile. 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 appears to 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 current and former Instructors who may have worked in California when they were not a resident of California were excepted from the settlement.

In the *Sullivan* case, 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. The lawsuit alleged that Oracle failed to pay overtime for work performed in California to Instructors domiciled in other states, but who worked in California, and sought damages under the Labor Code. Oracle removed the case to federal district court on jurisdictional grounds.

The federal district court dismissed all of the Instructor's claims, holding that the Labor Code does not apply to non-residents who work primarily in other states. The employees then appealed the ruling to the 9th Circuit Court of Appeals. That Court held that the overtime provisions of the Labor

Code do apply to work performed in California by non-residents, and that applying them does not violate the United States Constitution.

Passing The Overtime Buck

In withdrawing its decision, the 9th Circuit certified the following question to the California Supreme Court: Does the Labor Code apply to overtime work performed in California for a California-based employer by non-resident employees, such that overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week?

The Court found that there was no directly controlling precedent on this question, and recognized that the answer to this question will have considerable impact on California employers and non-resident employees. Furthermore, the Court believed that the answer to this question may have an appreciable economic impact on the overall labor market in California, given the competitive advantage non-resident employees may have over resident employees if overtime pay under the Labor Code is not required for work they perform in California.

Impact Of Withdrawing The Opinion

As a result of the Court of Appeals' action California state courts are not permitted to adopt or cite to the decision until the California Supreme Court addresses the question posed. In the meantime, we advise caution. California employers that hire non-residents to perform work in California should 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).

To talk about how the opinion affects your particular operation, give us a call.