

# LOCATION, LOCATION, LOCATION: WHAT FACTORS DETERMINE WHETHER CALIFORNIA LAW APPLIES TO NON-RESIDENTS?

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In deciding whether California's overtime laws apply to non-resident employees who spend full days or weeks working in the state, the California Supreme Court has previously held the state's labor code applies to overtime work "performed in California." By focusing on the location of the work performed, the Supreme Court signaled the state's strong interest in enforcing its overtime laws for work performed within its borders without regard to either party's residence as controlling factors.

However, a federal court in the state just issued a new decision addressing this same question in March 2017 – will this case change the standard, or does it simply refine existing law? Read on to find the answer...

## BACKGROUND DECISIONS

The last California Supreme Court pronouncement on this issue came in the 2011 case of *Sullivan v. Oracle Corp.* There, the court decided that Oracle, a California-based employer, needed to apply California overtime law for work performed within the state. The court cited to a prior decision from 1996, *Tidewater Marine Western, Inc. v. Bradshaw*, that reasoned an employee is deemed to be a wage earner of California, and thus entitled to its protections, if "the employee resides in California, receives pay in California, and works exclusively, or principally, in California." This standard would suggest a multi-factor test, looking to factors such as residency, in determining the ultimate answer.

## Related People



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## Service Focus

Wage and Hour

Notably, the court said it was not prepared to answer the question whether businesses based outside of California could be liable for work occasionally performed in California by non-resident employees, although it noted “the Legislature may not have intended” such a situation to be regulated by California’s overtime laws. But the court cautioned that it also was not prepared to hold that California’s wage orders necessarily applied to “*all* employment in California, and *never* to employment outside California.” This hedging analysis did little to provide clear guidelines for employers wanting to know when they are subject to California law for work performed in California, as our state generally imposes stricter requirements than other state or federal laws.

Nonetheless, many subsequent federal decisions interpreting California’s ruling in *Sullivan* found that the location of the work performed was, in fact, “determinative” to whether California’s wage and hour laws would apply if the work was performed principally in California. If the work was performed principally in other states, the wage and hour laws of California would not apply, even if *some work* was performed in the state.

## **COULD RECENT FEDERAL CASE UPSET THE APPLE CART?**

Fast-forward to March 2017. At least one federal court has now questioned the location-of-work test as a controlling factor. In *Vidrio v. United Airlines, Inc.*, decided on March 15, 2017, the U.S. District Court for the Central District of California considered a multi-factor approach. This test calls for a determination based on where the employer maintains its business headquarters, where the employee resides, as well as where the work is performed.

In making its ruling, the federal court noted the two different approaches to the jurisdictional question. The case involved a lawsuit filed by flight attendants challenging their pay statements; the judge applied both tests before ruling in favor of the employer.

The court said it was undisputed that class members spent more than 80 percent of their working time outside of California, and that the employer’s headquarters was in Chicago with substantial administrative operations in Houston. Citing these facts, the court ruled in favor of United, also noting class members were not principally

working in California and United's operations in California made up less than 20 percent of its overall business. The court made clear that the *same* jurisdictional limits applied without regard to whether the controversy involved pay statements or underlying "wage and hour statutes and regulations to which it relates."

## **CONCLUSION: WHAT'S NEXT?**

Reading between the lines, it does not appear that federal courts interpreting *Sullivan* have been willing to altogether abandon the multi-factor test in favor of a location-of-work test. However, last month's decision in *Vidrio* makes clear that it still remains a significant factor in the analysis, contrary to the vague and hedging ruling of *Sullivan*.

Employers should seek legal counsel on a case-by-case basis with regard to whether California law will apply to work performed by any employees who happen to do work in California.

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