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Employment Law Alert

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California Supreme Court Extends California's Overtime Wage Protections to Visiting Workers

The California Supreme Court has ruled that California's overtime laws apply to work performed within California by nonresident employees of a California-based employer. *Sullivan v. Oracle Corp.*, No. S170577 (June 30, 2011). This unanimous decision also has important implications for employers based in other states that send employees into California to work for a day or more. These employers should expect their employees to argue, based on *Sullivan*, that they too are covered by California's overtime laws.

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In *Sullivan,* the federal Ninth Circuit Court of Appeals asked the California Supreme Court to decide whether California's overtime laws applied to three nonresident employees of Oracle Corporation, a California-based company. The employees had worked in California for varying periods during 2001-2004. The Supreme Court held that the relevant provisions of the California Labor Code unambiguously apply to "any employee" without regard to residency status. The court also observed that although the Legislature has exempted nonresident employees from other Labor Code provisions, it did not do so in the overtime laws.

The Supreme Court further held, based on a conflict-of-law analysis, that California law applied to the three employees involved. In particular, the court found that California has plainly articulated a strong interest in applying its overtime laws to all nonexempt employees performing work within California. In contrast, neither Arizona nor Colorado has evinced an interest in regulating overtime compensation for work performed in other states and those states' general interest in fostering a business-friendly environment would not apply to work performed in other jurisdictions.

The court dismissed Oracle's principal arguments, which included the assertion that the Legislature would not likely have intended that California's wage laws apply to visiting, nonresident employees. Citing the practical burdens that employers would face in complying with the overtime and other wage laws of all the states in which its employees work, Oracle argued that a construction of California's overtime law that made it applicable to nonresident employees could impose an unconstitutional burden on interstate commerce. On this point, the court emphasized that it was deciding only the question of

the applicability of the overtime law and that it would not assume that the outcome of a conflict-of-laws analysis would be the same with respect to the other California wage laws Oracle had cited. Further, the court asserted that Oracle's argument about the burdens involved was "entirely conjectural," given that Oracle is based in California.

Sullivan also decided two subsidiary questions regarding the applicability of California's Unfair Competition Law (UCL, Bus. & Prof. Code § 17200 *et seq*.). First, the court reaffirmed that the UCL applies to an employer's failure to pay required overtime wages. Second, the court held that the UCL does not apply to an employer's failure to comply with the federal Fair Labor Standards Act (FLSA) for work performed in other states.

The bottom line after *Sullivan* is that California-based employers that bring nonresident employees into the state for a day or more must pay those employees according to California's overtime laws for work performed in California. The key impact will be for nonexempt employees who are entitled to daily overtime -- a requirement that does not exist in most other states. Also, while the high court limited its holding to overtime pay, employers should seek legal advice regarding the application of other California wage and hour protections to nonresidents who work in California.

Finally, although *Sullivan*'s specific holding is limited to California-based employers, employees of businesses based in other states are likely to argue that its rationale applies to any nonresident employee who would become subject to California's overtime law by performing at least a full day's work within the state. *Sullivan* directly supports part of this argument, given its holding that California's overtime law applies without regard to the residence of the employees involved. However, *Sullivan* does not ensure a decision in favor of nonresident employees because they still would have to demonstrate that California law applies based on the conflict-of-law analysis *Sullivan* used – i.e., examining whether the state where the employees reside has an expressed interest in applying its wage laws wherever its resident employees work, and whether that interest would be significantly impaired if its law did not apply to work performed within California.

Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, risk management, wage and hour class actions, ERISA litigation, and appellate law. If you have questions about your workplace obligations, please contact Michele Ballard Miller (mbm@millerlawgroup.com)

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