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GOLDEN STATE OF MIND

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Employers based in other states may send their workers to California on sales or service calls, for long-term consulting assignments or for brief meetings.

Employers regularly employing workers in California learn - sometimes the hard way - about the many unique employment laws and regulations they must follow, particularly in the "wage and hour" arena. But then there are businesses whose workers enter California only sporadically or for short periods of time. Can it be that an employee who lives and works in Arizona is covered by Arizona law on Monday and California law on Tuesday just because she takes a business trip? Hint: If the answer were "no," this article would be much less interesting.

Sullivan v. Oracle Corporation

The 9th Circuit Court of Appeals recently decided that employees who normally live and work in other states may be entitled to the protections of California's wage and hour laws when they work in California, even for just a day at a time.

Oracle Corporation has its headquarters in California and operations throughout the world. The company employs a number of "instructors" who help customers learn how to use Oracle software. Oracle classified these workers as "exempt" from overtime for a number of years. But the company reclassified them as "non-exempt" in 2003, apparently in reaction to a class action lawsuit.

More litigation ensued, in which Oracle's non-resident instructors sought overtime and other wage and hour benefits that are due "non-exempt" employees in California. Donald Sullivan and others, representing a class of employees living and working in other states, such as Arizona and Colorado, alleged they did not receive overtime pay for work performed over eight hours work in a day, double time for work in excess of 12 hours in a day, and other provisions unique to California's labor laws.

The claims were not limited to full weeks of work performed in California. The instructors sought compensation even when they worked in California for less than a full week. The named plaintiffs worked in California for as few as five days, and as many as 33 days, during one of the years at issue.

Conflict of Laws

The District Court granted Oracle's motion for summary judgment against the claims. The lower court decided that California's Labor Code does not apply to non-residents who occasionally performed work in California. The court also decided that if the Labor Code were to apply, it would run afoul of the U.S. Constitution's 14th Amendment.

The Court of Appeals reversed in Sullivan v. Oracle Corporation, 2008 DJDAR 16630 (Nov. 6, 2008). The court first decided that California's wage and hour laws apply to non-residents. The court applied a traditional "conflict of

laws" analysis. First, the court held that California intends its wage and hour laws to apply to any work performed in California, even by non-residents. The court cited no clear authority expressly applying California wage and hour law to non-residents, but rejected Oracle's arguments nonetheless.

The Court of Appeals next compared California's overtime laws with those of Colorado and Arizona (neither of which has any wage-hour laws other than the federal Fair Labor Standards Act). Having found "material differences" between California's overtime laws and those of its sister states, the court then determined that California has a strong interest in applying its laws to all work performed in California. On the other hand, the court found Colorado and Arizona do not have a strong interest in avoiding the application of California law to work performed within this state.

Challenges Under the U.S. Constitution

Having resolved the conflict of laws issue, the court turned to the arguments Oracle asserted under the U.S. Constitution. The 9th Circuit found neither the "dormant" Commerce Clause nor the 14th Amendment precludes application of California's wage-hour laws to non-residents. The court found that California had sufficient contacts and interests to preclude application of the Due Process Clause. The court rejected Oracle's "dormant" Commerce Clause argument out of hand, because

California's overtime law treats residents and non-residents the same.

Ripple Effects

The *Sullivan* case appears to be concerned only with unpaid overtime based on California law. The opinion, however, could be extended to a number of other wage and hour laws unique to California. For example, many states permit employees to forfeit accrued and unused vacation pay. But California law considers vacation to accrue with each passing day of service. So, would a portion of vacation time earned while an employee is working in California "vest" and be due upon termination of employment?

What about meal periods? Must an employer in Arizona require an employee to take meal and rest periods in accordance with California law when a worker spends a day or more in California?

Must paycheck stubs comply with California's Labor Code when employees earn part of their wages here?

Employers also are not required to reimburse business expenses under federal law and most state laws. But in California, employers are required to do so. Thus, employees in California on business trips may obtain the protections of Labor Code Section 2802 and entitlement to reimbursement of business expenses in accordance with that statute's requirements.

California also imposes significant obligations regarding "uniforms" that federal and other states' laws do not. You get the picture.

Labor Code aside, what are employers' obligations with respect to other employment laws unique to California? For example, an employee in another state may have a medical condition that does not constitute a disability under applicable federal or state law. But if

that employee enters California, the condition might well qualify as a disability under the more generous Fair Employment and Housing Act. Will the employer have an accommodation obligation applicable only when the worker is in California?

The Court of Appeals did not address these issues. The court also did not analyze what happens when employees work partial days within and without California. However, plaintiff attorneys seeking fertile ground for new class action litigation may have just found a new area to till. Defense counsel will be busy thinking of new ways to address the significant issues the court raised in *Sullivan*. These could include employment agreements with choice of law clauses, or new legal arguments against the labyrinth compliance problems that *Sullivan* may engender. Until then, employers with multi-state operations may wish to consult counsel about their potential risks.

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