A Timely Analysis of Legal Developments

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The Ninth Circuit Court of Appeals holds that California's overtime laws may have extraterritorial application to nonresidents working temporarily within the state. However, the court limits the reach of California's unfair competition law outside of the state.

# *Colorado and Arizona Employees Working in California Are Protected By California Overtime Laws According to the Ninth Circuit*

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**UPDATE:** On February 17, 2009, the Ninth Circuit withdrew its decision in *Sullivan v. Oracle* and remanded the case back to the California Supreme Court for reconsideration.

The Ninth Circuit in *Sullivan v. Oracle Corporation*, (08 Cal. Daily Op. Serv. 13,881) (Nov. 6, 2008), came to three important conclusions regarding the reach of certain California laws:

- First, California's overtime laws may apply to nonresident employees (in the case itself, individuals from Arizona and Colorado were involved) for those periods of time that the employees temporarily work in California;
- Second, the court found that a company that has a sufficient presence in the state, such as Oracle, can be required to comply with California law without violating that employer's due process rights; and
- Third, the court found that California's unfair competition law does not apply to acts based on alleged federal wage law violations that occur outside of the state.

## Factual Background

The plaintiffs, three nonresidents of California, brought a wage and hour class action against Oracle, a Delaware corporation with its headquarters in California. The three plaintiffs worked as "Instructors" who trained customers to use Oracle software. As part of their jobs, they traveled to California from Colorado and Arizona for periods of time ranging from several weeks to several months.

The case followed a decision by Oracle to reclassify the Instructors from exempt to nonexempt without retroactively providing overtime payments for the work performed prior to the reclassification. The plaintiffs brought a proposed class action seeking unpaid overtime for out-of-state Instructors who worked complete days in California. The plaintiffs also brought a claim under California's Unfair Competition Law (commonly

referred to as Business and Profession Code § 17200), both for violations that occurred in California and throughout the United States.

The district court granted summary judgment in favor of Oracle, finding that California's labor laws do not apply to Arizona and Colorado employees temporarily working in California. The plaintiffs appealed to the Ninth Circuit Court of Appeals.

## The Ninth Circuit's Analysis

*Arizona and Colorado Employees Should Be Compensated Under California Law for Any Complete Day's or Week's Work Performed in the State*

The Ninth Circuit Court of Appeal first considered whether the overtime provisions of California's Labor Code should apply to work performed in California by residents of Colorado and Arizona. The court applied the following three-part "choice of laws" test to come to its conclusion that California law should be applied:

- **Are there material difference in the laws?** If one state has overtime provisions that would apply to the pertinent situation and another state does not, then the applicable law in each state is materially different. The court found California's labor laws were materially different than Arizona's and Colorado's because Arizona had no state labor laws and Colorado's laws were less stringent.
- **What are the states' interests?** If the states' laws are materially different, then, according to the Ninth Circuit, the court must determine "what interest, if any, each state has in having its own law applied to the case." The court in Oracle found that while Colorado has expressed the same interests as California in the welfare of its workers, the state had provided no protection whatsoever to workers performing work outside Colorado. Arizona, by contrast, had expressed no interest as it had no state overtime law. By contrast, California clearly intended its labor laws to apply to work done in California by nonresidents. The court noted that California's interest includes preventing employers from hiring cheaper nonresidents, which would substantially disadvantage California residents.
- **Which interest controls?** The final part of the test requires the court to select the law of the state whose interests would be more impaired if its law were not applied. The Ninth Circuit declined to apply this element as it found Colorado and Arizona have no expressed interest in applying their minimum wage laws (or lack thereof) to the plaintiffs' work in California, whereas California did have a strong interest.

The court concluded based on this test that there was no reason to believe that Colorado or Arizona had any interest in ensuring that their residents are paid less when working in California than California residents who perform the same work.

*Oracle Maintained a Sufficient California Presence to Require Adherence to California law Without Violating Due Process*

The court also considered whether California's Labor Code could be applied to Oracle in this case without violating the Due Process Clause of the United States Constitution. The Due Process Clause generally permits a state to apply its laws to a case so long as there exists "significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." The court found that Oracle had sufficient contacts with California to require it to comply with the state's labor laws. The employer, Oracle, has its headquarters and principal place of business in California. In addition, the court noted that Oracle made the decision in California to classify the plaintiffs as teachers and to deny them overtime pay, and the work in question was performed in California.

*California's Unfair Competition Law Does Not Apply to Acts that Occur Outside of the State*

Finally, the court considered the reach of California's unfair competition law, Business and Professions Code section 17200. Specifically, the court considered whether the plaintiffs could assert a section 17200 for alleged violations of the federal Fair Labor Standards Act

(FLSA) that occurred outside of California. The court of appeals found that section 17200 does not apply to such violations occurring outside of California.

## Implications

Multi-state employers who conduct business in California should take several steps following the Oracle decision to determine whether they are at risk of having to comply with California wage laws every time they send a worker to spend a day or more in California:

- **Determine employer contacts with California.** Employers should consider whether they have sufficient continuing contacts with California to require them to comply with the holding in *Oracle*. The assistance of experienced legal counsel may be needed in making this determination. However, it is unlikely that the company would be required to be headquartered in California or that a decision about an employee's status be made there. Empowered by this decision, California (and the plaintiffs' lawyers who practice there) are likely to seek enforcement of California law in circumstances where an employer has far fewer connections with the state than Oracle had.
- **Consider the different state laws.** The holding in this case specifically concerns Colorado and Arizona employees temporarily working in California. Because this decision required a consideration and comparison of individual state laws, it is *possible* that a court may come to a different decision depending on the out-of-state law in question, particularly where a state has expressed a specific interest in the extraterritorial application of its wage laws. That said, most (if not all) states have less detailed wage and hour laws than California (or no such laws), meaning that a comparative reading of any state's law versus California's law will likely not be helpful to employers.
- **Analyze employee exemption status under California Law.** An employer should also determine whether an employee assigned periodically to work in California, who is exempt under his or her home-state law, would still be considered exempt under California law. While it was not a specific issue considered in this case, the opinion raises the possibility that an employee who is exempt under the law of his or her state may nevertheless be considered nonexempt while working in California.
- **Evaluate payroll practices.** Employers should also review payroll practices and capabilities to ensure that a procedure is in place to communicate to payroll departments the occurrence of out-of-home-state travel to California so that appropriate wage payments can be calculated under California law. This requirement is particularly crucial if an employer sends nonexempt workers on temporary work assignments in California, where such workers could arguably be entitled to overtime after eight hours in a day and perhaps even statutory meal and period rights.

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