A Timely Analysis of Legal Developments

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July 2011

The California Supreme Court in *Sullivan v. Oracle Corporation* ruled that out-of-state employees working in California are protected by California's overtime laws and the state unfair competition statute, but work performed outside of the state is not similarly protected.

California Supreme Court Finds Out-of-State Employees Working in California Are Protected by California Overtime Laws

By Jim Hart

In *Sullivan v. Oracle Corporation*, the California Supreme Court recently issued three important rulings regarding the reach of California's overtime laws:

- First, California's overtime laws were found to apply to nonresident employees from Arizona and Colorado for the time they were temporarily working in California, particularly since Oracle was a California-based employer and the employees worked at least a full day in the state;
- Second, the employees' temporary work in California provided a basis to seek overtime compensation under California's unfair competition law (California Business and Professions Code section 17200); and
- Third, making a decision in California to classify employees as exempt does not, standing alone, justify applying California's unfair competition law to alleged violations that occurred outside the state.

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 litigation followed a decision by the company 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 Professions Code section 17200), both for violations that occurred in California and throughout the United States.

The district court granted summary judgment in favor of the company, finding that the California Labor Code does not apply to Arizona and Colorado employees temporarily working in California. The plaintiffs appealed to the U.S. Court of Appeals for the Ninth

Circuit, which initially found that California's overtime provisions protected workers temporarily working in California, but then asked the California Supreme Court to decide several issues that had been raised.

The California Supreme Court certified the following issues for review:

First, whether the California Labor Code applies to overtime work performed in California for a California-based employer by out-of-state employees, such that overtime pay is required for work in excess of eight hours per day or in excess of 40 hours per week;

Second, whether California Business and Professions Code section 17200 applies to overtime work described in question one; and

Third, whether California Business and Professions Code section 17200 applies to overtime work performed outside of California for a California-based employer by out-of-state employees in the circumstances of this case if the employer failed to comply with the overtime provisions of the FLSA.

The California Supreme Court issued its ruling on June 30, 2011, finding as to questions one and two that the California Labor Code and Business and Professions Code section 17200 do extend to the Colorado and Arizona employees under the facts of the case, but, as to question three, that California's unfair competition law did not apply to out-of-state employees simply because the company made the classification decision in California.

The California Supreme Court's Analysis

Applying California's Overtime Provisions to Non-Residents

When deciding whether to apply California's overtime laws to the Colorado and Arizona employees who worked in California, the court analyzed the specific language of California's overtime statute, finding that the express language of the statute does not distinguish between resident and non-resident employees and instead applies to all individuals. The court also reviewed the purpose behind the overtime statute, finding that overtime protections would be undermined if out-of-state employees, such as the plaintiffs in this case, were not paid overtime under California law for work performed in California. In this regard, the court observed that the company was effectively seeking to avoid California's overtime law by applying the less favorable wage and hour laws of the employees' home states, which would "encourage employers to import unprotected workers from other states."

The court also based its decision on a conflict of laws analysis. Thus, the court found that California had the authority to regulate overtime work and overtime pay within its borders and the state had a strong interest in extending overtime pay to all workers in the state regardless of their residency. By contrast, the court found that neither of the home states of the employees (Arizona and Colorado) had asserted an interest in regulating out-of-state overtime work performed by its citizens, explaining that Colorado and Arizona have expressed no interest in "disabling their residents from receiving the full protection of California overtime law . . . or in requiring their residents to work side-by-side with California residents in California for lower pay." As a result, the court found that there was no conflict between California law and the laws of the other states under these circumstances.

Finally, the court's decision was influenced in part by the fact that the company's headquarters are located in California, that the plaintiffs were seeking to apply the overtime law of the state, and that no out-of-state employer was a party to the litigation.

Permitting Non-Residents to Allege Unfair Competition Claims for Work Performed in California

Broadly speaking, California's unfair competition law permits individuals to bring an action under Business and Professions Code section 17200 based on, among other things, a separate violation of a rule or law – known as a "predicate offense." The question presented to the court in *Oracle* was whether out-of-state employees could rely upon the alleged breach of California's overtime laws as a predicate offense for purposes of asserting a separate claim under California's unfair competition law.

Relying on its analysis with regard to the first question, the court quickly disposed of the second question as follows: "We have already decided that the failure to pay legally required overtime compensation falls within [section 17200]'s definition of an 'unlawful . . . business act or practice.'"

Permitting Non-Residents to Allege Unfair Competition Claims for Work Performed Outside California

As with the first question, the court examined the language and purpose of California's unfair competition law when resolving the third

question. The court found that neither the language of the unfair competition law nor its legislative history provide any basis for concluding the legislature intended the unfair competition law to apply to conduct outside of California. The court invoked a so-called presumption against extraterritorial application that presumes a law does not apply beyond a state's borders. Based upon this presumption, the court found no basis to apply the unfair competition law beyond the borders of California.

Implications

The California Supreme Court's decision in *Oracle* leaves more unanswered questions than its resolves. In part, this is due to the court's heavy reliance on the specific facts of the case. The court emphasized the specific cause of action alleged (overtime), the specific interests expressed by the states involved (Arizona and Colorado), and the fact that the company's headquarters are located in California. It is unclear whether the decision will be extended to residents from all other states, to employers headquartered in other states, or to claims other than overtime.

Nevertheless, the following are some practical issues for employers to consider when assessing related wage and hour matters, in light of the *Oracle* opinion:

- **Pay particular attention to *Oracle* if based in California.** Because the opinion cited the company's California headquarters to reach its decision, California employers with base operations in-state should take particular care to consider the case in light of their specific circumstances.
- **Review whether the home state of a visiting employee has attempted to extend overtime regulations (or other wage and hour law) to its citizens working out of state.** Part of the analysis in *Oracle* depended on comparing California's stated interest in protecting workers with the stated interests, if any, expressed by the home states of the plaintiffs. Employers should consider how the conflict analysis undertaken by the court in *Oracle* would apply to other states' employees. In this regard, employers should pay particular attention to situations where, absent the application of California law, an employee would otherwise be left without any protection.
- **Consider how the court's reasoning might apply to other wage and hour issues.** The court took care to confine the ruling in *Oracle* to overtime accrued in California. As to other wage and hour issues, the court refused to "necessarily assume the same result would obtain for any other aspect of wage law." In assessing how to treat employees on assignment in California, employers should consider what impact *Oracle* will have on meal periods, rest periods, pay stubs, and other wage and hour issues for the out-of-state employee. While the opinion fails to provide an answer, it does, in part, justify applying California's overtime provisions to out-of-state employees due to the state's "strong interest in governing overtime compensation for work performed in California." One consideration therefore is assessing whether California has expressed a strong interest in other aspects of wage and hour law as well.
- **Analyze employee exemption status under California law.** The court declined to consider whether an employee assigned temporarily 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 non-exempt while working in California. A temporary reclassification may in some circumstances be a possible solution.
- **Consider where wages are paid.** With regard to the third question considered (whether out-of-state overtime may give rise to a California unfair competition claim), the court in *dicta* mentioned that the unfair competition law "might conceivably apply to plaintiffs' claims if their wages were paid (or underpaid) in California, but the stipulated facts do not speak to the location of payment." Because the court articulated this issue, but left it unanswered, employers analyzing similar circumstances should consider whether they would be deemed to have paid wages in California.

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