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Labor & Employment Client Service Group

To: Our Clients and Friends July 13, 2011

California Supreme Court Applies State Law Overtime Rules To Nonresident Employees

On June 30, 2011, the California Supreme Court, in *Sullivan v. Oracle Corporation*, issued an opinion unanimously holding that California based businesses must pay out of state workers overtime in accordance with California law for work performed in the state. The court also found that the failure to pay legally required overtime to these nonresident employees constitutes an "unlawful…business act or practice" for purposes of California's Unfair Competition Law ("UCL").

What's This All About?

California Labor Code requires overtime compensation for nonexempt employees to be paid at the rate of one and one half times the regular rate for hours in excess of eight in one workday, 40 in one workweek, and the first eight hours on the seventh workday in a week. Overtime compensation increases to twice the regular rate for work in excess of eight hours on the seventh workday and for work in excess of 12 hours in a workday.

Sullivan involved the claims of three nonresidents of California employed as training instructors by Oracle and each worked primarily in their home states. They traveled to other states including California to perform training sessions as needed. The lawsuit sought recovery for overtime pay for the days and weeks the nonresidents had worked in California and restitution of the unpaid overtime under California's UCL, which stretches the statute of limitations from three (3) years for the California statutory overtime claims to four (4) years under the UCL.

After extensive discussion of the relevant statute and California's rules for reconciling conflicts among different states' laws, the California Supreme Court held that the plain language of the California Labor Code applies to "overtime work performed in California for a California based employer by out of state plaintiffs in the circumstances of this case, such that overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week."

The court emphasized that the overtime rules reflect California's overriding interests in protecting the health and safety of employees from the "evils" associated with overwork. The court found that the

"overtime laws speak broadly, without distinguishing between residents and nonresidents" and are not ambiguous or uncertain. California overtime laws apply to employees who work in California regardless of where they live. Expressly left open, however, is the question of applicability of other California wage and hour laws and employment regulations to visiting employees. The court further rejected arguments related to the burdens on out of state employers by pointing out that these were "entirely conjectural" in that Oracle was a California based employer. It sidestepped the question of whether businesses based outside of California could be liable for work performed occasionally by its non California employees in California, although it noted that "the Legislature may not have intended" that situation to be regulated by California's overtime laws.

The court concluded further that since it has long held that the UCL applies to overtime claims, it applies equally to overtime claims brought by non Californians, extending the statutory limitations period from the Labor Code's three years to the UCL's four year reach.

Why It Matters

This ruling is likely to breathe new life into some cases and encourage the filing of others. The court's decision substantially expands employer exposure for overtime claims against California based employers by nonresidents who temporarily work in California. Additionally, given California's expansive employment laws that regulate California's employers and the open ended nature of the court's decision, employers should expect similar claims based on the state's numerous labor provisions. In particular, claims based on California's unique requirements regarding breaks are ripe for inclusion under the reasoning of *Sullivan*, because in prior opinions the California Supreme Court has analogized the public policy basis for the break rules to the overtime rules.

On its face, the court's ruling is limited to nonresident employees of California based employers who perform work within the state. Many of the arguments underlying the court's decision to apply California law to visiting employees would apply equally to employers "based" outside of California, particularly if those employers have a permanent presence within the state. Consequently, employers who regularly send workers to California on business should consider whether they may be subject to the state's overtime laws.

What Should Employers Do?

In light of this decision expanding the reach of the California overtime rules:

- California employers with nonresident employees performing some work within California are advised to review their pay practices applicable to these employees for compliance with California law.
- Non California based employers that regularly send employees to California to work on a temporary basis should carefully consider whether to proactively change pay practices to apply California law.

Bryan Cave LLP has substantial experience advising employers regarding compliance with California wage and hour law.

For additional information on this topic, please contact a member of Bryan Cave LLP's Labor and Employment Client Service Group.