

## EMPLOYMENT LAW

NEWSLETTER OF THE EMPLOYMENT & LABOR PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

### Court Holds That Out-of-State Employees May Be Entitled to Overtime Compensation When They Perform Work in California

[Funmi Olorunnipa](#)  
[Esra Hudson](#)

The California Labor Code requires California employers to provide employees with premium pay for overtime hours worked, unless those employees are properly classified as “exempt” pursuant to a number of limited exceptions detailed in the Labor Code.

In *Tidewater Marine Western Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996), the California Supreme Court previously concluded that California’s employment laws generally govern *all* work performed within the state. In *Tidewater*, the Court held that California could regulate the conduct of maritime employers who employed workers off shore, because all work performed occurred within the state law’s definition of California’s territorial boundaries. The federal Court of Appeals for the Ninth Circuit, whose jurisdiction includes California, recently applied the general rule in *Tidewater* to California’s employment compensation laws, holding that employees domiciled in another state are entitled to the protections and privileges of California overtime compensation laws for any work performed in California.

In *Sullivan v. Oracle Corporation*, No. 06-56649 (9th Cir. Nov. 6, 2008), three former employees hired by software developer Oracle Corporation to train customers brought a class-action lawsuit alleging the company violated the California Labor Code and Unfair Competition Law by failing to pay overtime for work performed in California by instructors domiciled in other states, who were previously misclassified as “exempt” employees.

#### NEWSLETTER EDITORS

**[Andrew Satenberg](#)**  
Partner  
[asatenberg@manatt.com](mailto:asatenberg@manatt.com)  
310.312.4312

**[Esra Acikalin Hudson](#)**  
Partner  
[ehudson@manatt.com](mailto:ehudson@manatt.com)  
310.312.4381

#### OUR PRACTICE

Manatt’s employment and labor attorneys work in partnership with our clients, bringing value by serving as an extension of their in-house human resources and legal groups. We offer comprehensive counsel on employment relationships to employers of all sizes across a wide business and industry spectrum. Our attorneys apply years of experience, extensive employment law skills ... [more](#)

- [Practice Group Overview](#)
- [Practice Group Members](#)

#### INFO & RESOURCES

- [Subscribe](#)
- [Unsubscribe](#)
- [Sarbanes-Oxley Act](#)
- [Newsletter Disclaimer](#)
- [Technical Support](#)
- [Manatt.com](#)

Recognizing the former employees were residents of other states, the Ninth Circuit rejected a district court's conclusion that the Labor Code does not apply to nonresidents who work primarily in other states, and held that the plaintiffs could bring forth their claims for overtime compensation under the Labor Code. Applying California choice of law rules, the Ninth Circuit found that California's Labor Code applied because California overtime law was "clearly intended to apply to work done in California by nonresidents." The Court also held that California law should be applied because of the state's "strong interest" in applying its law to work performed in California by citizens of other states.

Employers can take some comfort in the fact that the Ninth Circuit limited its ruling in *Sullivan* by applying it only to work performed inside the state of California. Rejecting the plaintiffs' Unfair Competition Law claim based on alleged violations of the Fair Labor Standards Act, the Ninth Circuit concluded that state law does not apply to the claims of nonresidents who allege violations of the federal act outside of California.

Given the Ninth Circuit's ruling in *Sullivan*, California employers should note that all employees who would otherwise qualify for overtime compensation, regardless of the state of their residence, are entitled to overtime compensation under California law if they perform the work at issue within the territory of the state of California. Therefore, to avoid penalties or litigation, employers should take care to ensure that all such employees are properly compensated pursuant to California overtime compensation laws.

[back to top](#)

**FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:**



**Funmi Olorunnipa** Ms. Olorunnipa is an associate with the Litigation practice group in the Los Angeles office. Ms. Olorunnipa's practice focuses on general litigation as well as all areas of labor and employment law. Prior to joining Manatt, Ms. Olorunnipa served as a judicial extern for the Honorable Marilyn Hall Patel in the United States District Court for the Northern District of California.



**Esra Acikalin Hudson** Ms. Hudson's practice focuses on all aspects of employment law and related litigation. She represents companies in state and federal court in claims of discrimination, harassment, wrongful discharge and related tort claims, breach of contract, trade secrets, and unfair competition, and all other employment-

related matters. Ms. Hudson also defends companies against employment-based class actions. She regularly represents employers in proceedings before state and federal agencies, including the California Department of Fair Employment and Housing, the California Division of Labor Standards Enforcement and the federal Equal Employment Opportunity Commission.

ATTORNEY ADVERTISING pursuant to New York DR 2-101(f)  
Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.  
© 2008 Manatt, Phelps & Phillips, LLP. All rights reserved.