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California's Overtime Laws Apply to Nonresident Employees

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Employers who have employees temporarily working on assignments in California are now at risk if those employees are not paid in accordance with California overtime laws. In *Sullivan v. Oracle Corporation*, the California Supreme Court issued a unanimous decision on June 30, 2011, holding that California's overtime laws *apply* to work performed in California, even if it is brief and intermittent, by employees who are not residents of California and are based elsewhere.

The employer, Oracle Corp., was headquartered in California, and the Court's decision did not address the application of its ruling to companies headquartered elsewhere. However, it is likely that plaintiffs' attorneys will argue that the holding should apply to all companies—and courts may agree. This decision therefore raises significant potential liability exposure for employers who occasionally have non-California employees perform work in California regardless of where the employer is located.

The employees who prevailed in this case were nonexempt instructors who traveled around the country to teach Oracle's customers how to use the company's products. They worked out of their homes in Colorado and Arizona, and most of their work was performed in those states. During the four-year period involved in the litigation, they worked in California for a total of only 74 days, 110 days, and 20 days, respectively. Oracle paid the plaintiffs in accordance with the overtime laws of their home states and did not pay them based on California's stricter requirements, for example, time-and-a-half after eight hours, and double time after 12 hours, in a day.

The Court found nothing in the wording of the California law to support applying it to only California residents. Observing that the employees' claims were limited to "days longer than eight hours, and weeks longer than 40 hours, worked entirely in California," the Court deemed the burden of complying with California law to be minimal. After examining the comparatively weak overtime laws in Colorado and Arizona, the Court had no difficulty finding that California's interest outweighed those of the other states, so there was no conflict.

> To permit nonresidents to work in California without the protection of our overtime law would completely sacrifice, as to those employees, the state's important public policy goals of protecting health and safety and preventing the evils associated with overwork. (Citation omitted.) Not to apply California law would also encourage employers to substitute lower paid temporary employees from other states for California employees, thus threatening California's legitimate interest in expanding the job market.

Because the Court expressly limited its decision to the facts of the case, important questions are left unanswered, including these:

- Does California's overtime law apply to companies based outside of California that sometimes send employees into California to perform work? If not, what does it mean to be "based" in California—does it depend on the company being headquartered in California as was the case with Oracle, or is a significant presence in California enough?
- What other wage-and-hour laws will apply to nonresident employees who work in California—such as laws addressing meal and rest periods, vacation pay, reporting time pay, and pay stubs?
- Will California's more restrictive exemption definitions apply, to convert an employee who may be exempt outside of California to non-exempt status while working in California?
- Will California's interest outweigh, and therefore California's law apply against, states like Oregon and Washington that have strict overtime laws of their own? Washington expressly applies its Minimum Wage Act extraterritorially, so what law applies if an employee based in Washington occasionally works in California? (Please see our past advisory discussing Washington's overtime law.)

Advice for employers

California-based companies should track separately any time worked in California by nonresident employees—no matter how temporary, part-time, or sporadic—and pay them in compliance with at least these California overtime requirements, while considering what other California wage-and-hour requirements might also be met:

- For any day on which the employee works more than eight hours entirely in California, pay time-and-a-half up

to 12 hours, and double time after that.
- For the seventh consecutive day in a week worked entirely in California, pay time-and-a-half for the first eight hours, and double time after that.
- Treat as "hours worked" all time an employee is suffered or permitted to work, applying California's stringent definition of what that means.

Any company based outside of California that wants to avoid being a test case should pay its employees who occasionally work in California in the same manner as California-based companies. Such employers should consider discussing with employment counsel the effect of this decision on their pay practices.