Just Passing Through: That's Enough in California

The California Supreme Court recently issued its long awaited opinion in Sullivan v. Oracle Corp. (6/30/11) --- Cal.4th ---, 2011 WL 2569530. In Sullivan, the state's high court concluded that the Bay Area software giant, Oracle Corporation ("Oracle"), was subject to suit for failing to pay overtime wages to out-of-state instructors for work performed in California under the state's wage and hour laws.

Background

Plaintiffs, Donald Sullivan, Deanna Evich and Richard Burkow, worked for Oracle as software instructors. Sullivan and Evich lived in Colorado, and Burkow lived in Arizona. Each of them periodically traveled to California to provide software training for Oracle approximately 15 to 33 days a year during the relevant time period.

Previously, Oracle had classified all of its instructors as "teachers," who are exempt under both state and federal overtime laws. In 2003, Oracle's instructors joined in a federal class action against the company alleging misclassification under the Fair Labor Standards Act ("FLSA") and sought unpaid overtime compensation. Oracle settled that class action in 2005, and the class claims were dismissed with prejudice; however, claims involving the non-California resident instructors remained unsettled.

The out-of-state plaintiffs asserted two main claims: (1) that the California Labor Code's ("Labor Code") overtime provisions applied to their claims for compensation for work performed in California [with the ancillary question of whether the same claims can serve as a basis for claims under California's Unfair Competition Law (UCL)]; and (2) that their claims for overtime compensation under the FLSA for work performed in other states also can serve as a basis for UCL claims.

The Ninth Circuit Court of Appeals certified these questions to the California Supreme Court, since they both involved interpreting state rather than federal law.

The Court's Decision – Protection for Everyone

On the first and more hotly-debated question, the California Supreme Court ruled that the Labor Code's overtime provisions do not make a distinction between residents and nonresidents. Accordingly, the Court held that the Labor Code's provisions apply to any person who works in California for at least one (1) full day (while working for a California-based employer). "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," Justice Kathryn Werdegar wrote in the Court's unanimous opinion. The Court further concluded that not applying California law would encourage employers to substitute lower-paid temporary employees from other states for California employees.

On the ancillary question noted above, the Court held that overtime claims cannot serve as the basis for UCL claims.

In answering the second question noted above, the Court held that the UCL does not apply

to overtime work performed outside California by out-of-state employees based exclusively on the failure of an employer to comply with the overtime provisions of the FLSA. Unfortunately for employers looking for some degree of predictability on this point, the Sullivan decision did not resolve the question of whether the UCL would apply to out-of-state work if the alleged underpayment happens in California, i.e., if the checks are cut in California. Expect litigation on this nuanced point – after all it's California!

Why Is this Important?

In California, overtime must be paid not only on a weekly basis, but also on a daily one. Specifically, overtime must be paid for hours worked in excess of eight (8) hours per day or forty (40) hours per week, and for the first eight (8) hours on the seventh workday in one (1) week. By contrast, the FLSA requires overtime pay only for work performed in excess of forty (40) hours in a week. Moreover, many states have different requirements for overtime wage payments than California, subjecting multistate employers to a mélange of overtime laws.

This ruling exposes multistate employers who do business in California to a variety of class-action suits under California's wage and hour laws. The Court's holding specifically dealt with a California-based employer, however, this ruling will likely encourage claims by out-of-state employees against non-California based companies who conduct business through these employees in California. This ruling also could be used as a basis for subjecting such employers to the administratively burdensome California labor laws, including laws on pay stub requirements and meal and rest breaks requirements.

The Court's narrow decision leaves open a number of unanswered questions for employers going forward. First, whether employers not based in California (the Court did not define "California-based" employers) are required to pay their non-California employees according to the California Labor Code overtime provisions for time they work in California. Second, as noted above, whether the UCL applies to non-California employees if the alleged underpayment occurrs in California. Third, what additional California Labor Code provisions, if any, will apply to non-California employees who work in California.

If you have further questions about the Sullivan decision or other California employment law issues, please contact Harold Pinkley, Tara Presnell or Kyle Young.