Labor & Employment Law Blog
Up-to-date Information on Labor & Employment
Presented By SheppardMullin

Ninth Circuit Affirms That Employees Who Work Outside California Cannot Use the California Unfair Competition Law to Vindicate Their Federal Overtime Rights

December 15, 2011 by Thomas Kaufman and Travis Anderson

On December 13, 2011, the Ninth Circuit issued its most recent decision in the *Sullivan v. Oracle* saga. *See Sullivan*, D.C. No. CV-05-00392-AHS (9th Cir. Dec. 13, 2011). The decision followed the June 30, 2011 opinion of the California Supreme Court, in which the Court answered a question that the Ninth Circuit had posed to it: whether employees of a California-based employer who worked entirely outside California could sue the employer under the California Unfair Competition Law ("UCL") for the employer's alleged failure to pay overtime to non-California employees as required under the federal Fair Labor Standards Act ("FLSA"). *See Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191 (2011). Upon remand of the case from the California Supreme Court, the Ninth Circuit held that the state court's opinion was "conclusive" and justified granting summary judgment to Oracle on the UCL claims of these non-California employees. Separately, the Ninth Circuit held that California overtime law applies to non-residents who perform work within the state, another question that it posed to the California Supreme Court to answer. This blog entry, however, focuses solely on the discussion of out-of-state employees' use of the UCL to vindicate FLSA rights.

By way of background, plaintiffs were out-of-state instructors for Oracle, who resided in Colorado and Arizona, and who brought a putative class action for overtime pay on behalf of out-of-state instructors. While Oracle's headquarters are located in California, Oracle employed Instructors in 20 states, including California. The parties disputed whether Instructors who worked entirely outside California and were denied overtime under FLSA standards could recover FLSA overtime under the UCL (because the statute of limitations had run on their actual FLSA claims).

The Central District granted Oracle's motion for summary judgment based on stipulated facts. On appeal, the Ninth Circuit initially affirmed that employees who never worked in California were barred from vindicating their FLSA rights through the UCL. The Ninth Circuit withdrew that opinion, however, and instead certified the question for the California Supreme Court to resolve as a matter of state law.

The Ninth Circuit asked the California Supreme Court to answer the following specific question: "Does § 17200 apply to overtime work performed outside California for a California-based employer by out-of-state plaintiffs if the employer failed to comply with the overtime provisions of the Fair Labor Standards Act?"

On this question, the Court ruled that because the employees at issue worked out of state, and nothing indicated the employees were paid in California, there was simply no "unlawful practice" in California that could support a UCL claim. The opinion was arguably vague, however, as to whether a court would need to analyze where an employee was "paid" separate from the issue of where the employee worked.

On December 13, 2011, the Ninth Circuit applied the California Supreme Court's decision to its facts and found it controlled the outcome without need for any further analysis of where employees were paid (or of any other issues). In affirming the summary judgment on the issue, the Ninth Circuit rejected the plaintiffs' argument that the UCL "applies to alleged violations of the FLSA outside of California," holding that "the [California Supreme] Court's answer . . . is conclusive" and affirming dismissal of this claim.

Accordingly, in a typical case where a California company is alleged to have misclassified out-of-state employees, *Sullivan* will almost certainly preclude employees who never worked or lived in California during the relevant period from suing under the UCL for alleged FLSA violations.

The very day after the Ninth Circuit issued *Sullivan*, Judge Josephine Tucker of the United States District Court for the Central District of California applied the *Sullivan* decisions to grant partial summary judgment to defendant Countrywide Home Loans in *Wallace v. Countrywide Home Loans*. Case No. 8:08-cv-01463-JST-MLG (C.D. Cal. Dec. 14, 2011). Although the district court had previously certified a nationwide UCL class asserting failure to comply with the FLSA, Judge Tucker's ruling effectively narrowed the class to those employees who worked during the relevant period in California--reducing the class from 4,300 employees to about 900. *See id.* The plaintiffs in Wallace argued that their situation was different from *Sullivan* because paychecks were mailed to the class members from California, as opposed to from outside of the state, which plaintiff argued was "payment in California" sufficient to anchor the case to California for UCL purposes. The district court disagreed, concluding that *Sullivan* governed the claims and

required dismissal, and that the location of where payroll was processed or mailed was "irrelevant."

The Wallace decision is a hopeful sign that courts applying *Sullivan* will not get bogged down in picayune details, but will instead follow the plain central holding of the *Sullivan* case that employees who work and live entirely outside California cannot use the UCL as a tool to assert their FLSA rights. Rather, those rights will have to be vindicated, if at all, through an actual FLSA claim and will be subject to the limitations of that statute (e.g., opt-in classes only, shorter statute of limitations).

Should you have any questions regarding the application of employment or labor law to your particular situation, please contact a labor and employment attorney at Sheppard Mullin for guidance.