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LEGAL ALERT

Legal Alert: The Ninth Circuit Confirms California Overtime Laws Apply To Nonresidents

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Executive Summary: On December 13, 2011, the Ninth Circuit issued its second opinion in the *Sullivan v. Oracle Corporation* case and confirmed that nonresident employees are subject to California's overtime laws when they perform work in California. This is a significant ruling for employers with nationwide operations because employers are required to comply with California labor laws even if those employees only work temporarily in California.

Factual Background: Defendant Oracle Corporation ("Oracle") is a large software company that employs instructors to train its clients how to use its software. Oracle's headquarters and principal place of business are located in California but it services clients throughout the United States.

Plaintiffs Donald Sullivan, Deanna Evich, and Richard Burkow are former Oracle employees who were required to travel to destinations away from their city of domicile for the purpose of performing software training for Oracle's clients. During the relevant time period, Sullivan and Evich resided in Colorado, and Burkow resided in Arizona. Oracle classified the plaintiffs as "instructors" who were exempt from the overtime provisions of California's Labor Code when they performed work in California.

The plaintiffs filed a class action lawsuit seeking damages for Oracle's failure to pay overtime for work performed in California. The district court granted Oracle's summary judgment motion and held that California's overtime laws did not apply to nonresidents who work primarily in other states. In its first opinion issued in 2008, the Ninth Circuit reversed the district court and held that California's overtime laws apply to nonresident employees when they perform work in California.

The Ninth Circuit later withdrew its 2008 opinion and asked the California Supreme Court to issue an opinion concerning the application of California overtime laws to nonresident employees. The California Supreme Court came to same conclusion as the Ninth Circuit's 2008 opinion and held that California's Labor Code applies to nonresidents.

In its 2011 opinion, the Ninth Circuit revisited the case in light of the Supreme Court's opinion, as well as to address Oracle's arguments that the application of California law to nonresidents violated Oracle's rights pursuant to the due process clause and dormant commerce clause. The Ninth Circuit rejected both arguments primarily because Oracle had sufficient contacts

with California to warrant the application of California law to its employees. The Court cited to the fact that Oracle's headquarters and principal place of business were located in California, the decision to classify the plaintiffs as instructors and deny them overtime pay was made in California, and the work in question was performed in California.

Employer's Bottom Line: While this opinion specifically addresses a California-based employer, it is likely that an employer whose operations are based in another state may be subject to the same ruling if its employees perform work in California. Therefore, it is recommended employees should be compensated in accordance with California's Labor Code when they perform work in California regardless of the location of the employer.

If you have any questions regarding this decision or other labor or employment related issues, please contact the author of this Alert, Michelle Abidoye, an attorney in our Los Angeles office at mabidoye@fordharrison.com or the Ford & Harrison attorney with whom you usually work.