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MSK Client Alert

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California employers have long had to cope with the legal perils of doing business in the Golden State. Our state's unique and onerous wage and hour requirements, along with an employee-friendly judicial climate, make even the most law-abiding company a potential target for lawsuits, particularly class actions. Recently, the California Supreme Court held that even *nonresidents* are entitled to the protection of California's overtime laws when they work in the state for a California employer. The message to California employers is clear: If you bring your nonresident employees to work in California, you need to know and follow California wage and hour law.

In *Sullivan v. Oracle Corporation*, the unanimous California Supreme Court made three important holdings: (1) the California Labor Code's overtime provisions apply to work performed in California by nonresident employees of California employers; (2) a claim by a nonresident employee for overtime violations may serve as a predicate for a claim under California's unfair competition law, Business & Professions Code § 17200, *et seq.* ("UCL"); and (3) a claim for overtime compensation under the federal Fair Labor Standards Act ("FLSA"), based on work performed for the California employer in other states, *cannot* serve as a predicate for a California UCL claim.

Oracle is a large software company headquartered in California. It employs numerous instructors across the country to train Oracle customers how to use its software. Oracle previously classified these workers as exempt teachers who were not entitled to compensation for overtime worked under federal or California law. Oracle later reclassified the instructors as nonexempt and began paying them overtime on a going-forward basis, but not retroactively for work performed before the reclassification.

The three plaintiffs were instructors and residents of Arizona and Colorado. As part of their job, they occasionally traveled to California to train customers. The plaintiffs brought a proposed class action against Oracle in federal district court in Los Angeles seeking unpaid overtime under California's Labor Code for all of

Oracle's out-of-state instructors who worked complete days in California. The plaintiffs also brought claims under California's UCL for alleged overtime violations based on work performed both in and outside of California. The district court granted summary judgment in favor of Oracle, and the plaintiffs appealed.

In November 2008, the U.S. Court of Appeals for the Ninth Circuit reversed, concluding that the overtime requirements of the Labor Code do apply to work performed in California by non-California residents. With regard to plaintiffs' UCL claims, the Ninth Circuit concluded that the UCL applied to alleged overtime violations for work the plaintiffs performed in California. However, the Court found that the UCL did not apply to alleged federal wage law violations that occurred *outside* of California. Shortly after issuing its decision, the Ninth Circuit withdrew it and instead certified the questions at issue to the California Supreme Court. On June 30, 2011 – more than two years later – the California Supreme Court issued its opinion in *Sullivan*, reaching the same conclusions as the Ninth Circuit's initial but withdrawn decision.

The California Supreme Court began by considering whether the state's labor law should apply to work performed in California by residents of Arizona and Colorado. Oracle argued that the overtime provisions of the employees' home states should apply, while the plaintiffs argued that California law should apply. In concluding that California's labor law applied, the Supreme Court noted that "California's overtime laws apply by their terms to all employment in the state, without reference to the employee's place of residence." The Court noted that the Legislature had not created an overtime exception for nonresident employees, even though the Legislature had created similar exceptions under the Workers' Compensation Act. The Court further noted the important public policy goals served by the overtime laws, such as health and safety and the "relatively weak bargaining position" of employees. Of particular importance to the Court was its concern that excluding nonresidents from California's overtime laws would encourage employers to "import unprotected workers from other states." The Court accordingly rejected Oracle's argument that the Legislature would not have intended that California's overtime law apply to nonresident employees since such compliance would result in "practical burdens" on employers.

The Court then engaged in a choice-of-law analysis, noting that California's labor law is materially different from Arizona's and Colorado's. Specifically, California has detailed and stringent overtime laws, while Arizona has no state overtime law and Colorado's overtime laws are less protective. Nevertheless, the Court concluded that, in light of the shared interests of the three states in protecting employees and expanding the labor market, no "true conflict" exists between their various laws. Further, the Court failed to find any interest Colorado or Arizona would have in ensuring that their residents were paid less when working in California than California residents performing the same work.

The Supreme Court accordingly held that California's overtime laws apply to work performed in California by nonresident employees of California-based employers, "such that overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week." Relying on the same considerations, the Supreme Court further held that such violations of California's overtime laws may also serve as a basis for UCL claims, which extend the limitation period for wage claims to four years.

The Court declined to apply the California UCL to Oracle's alleged violations of the U.S. Fair Labor Standards Act occurring outside of California. However, the Court explicitly limited its holding to the facts of the *Sullivan* case. In dicta, the Court opined that "the UCL might conceivably apply to plaintiffs' [federal law] claims if their wages were

paid (or underpaid) in California."

In light of the *Sullivan* decision, multi-state employers should consult with experienced employment counsel about their potential risks when they bring out-of-state employees to work in California.

Conversely, California employers should realize that sending their California employees to perform work outside of California probably will not evade coverage of the California Labor Code unless the other state's labor laws are even more protective of employees.

ASK MSK - Q&A Section:

Q: Is the *Sullivan* case limited to California's overtime requirements?

A: No. Although only the overtime requirements were at issue in *Sullivan*, that decision's reasoning presumably extends to other provisions of California's wage and hour laws. We expect plaintiffs' lawyers to begin to test the reach of *Sullivan* by filing lawsuits aimed at recovering, among other things, California's unique meal and rest period penalty payments. Consequently, it is important for multi-state employers to be aware of and seek to comply with all facets of California's wage and hour laws whenever their employees (wherever based) perform work in California, such as, but not limited to, daily overtime, the minimum pay for certain overtime exemptions (at least twice minimum wage), meal and rest period penalties of up to two additional hours of pay per day, and vacation pay requirements.

Q: The Sullivan case dealt with a California company. Does this mean that out-of-state employers are off the hook?

A: Probably not. Again, the rationale of the *Sullivan* holding would seem to apply equally to out-of-state employers. California presumably has an interest in protecting ***any*** employee who performs work within it borders, regardless of whether that employee works for an employer who has operations in California. Accordingly, any company that sends its employees to work in California should be aware of and seek to comply with California's wage and hour laws.