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California Supreme Court Rules State Overtime Provisions and the UCL Apply to Certain Work Performed By Non-Residents

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Introduction

On June 30, 2011, in *Sullivan v. Oracle Corporation*, S170577 (certified for review by 557 F.3d 979 (9th Cir. 2009)), the California Supreme Court unanimously issued a stern warning to California employers: The overtime obligations imposed by the California Labor Code apply to work performed by out-of-state residents during full days or weeks within California's borders. The Court also held, under the factual circumstances of the case, that (i) such work could support a claim under California Business & Professions Code §§ 17200 *et seq.* (the "Unfair Competition Law" or "UCL") but (ii) work performed outside of California could not support a UCL claim.

This decision arose out of litigation originally filed in the United States District Court for the Central District of California, involving three named plaintiffs who worked for defendant Oracle Corporation as "Instructors" – *i.e.*, individuals who provided training in Oracle products to Oracle customers. Oracle is based in California but the three plaintiffs resided outside of California and worked in California only occasionally (during 2001-2004, one plaintiff had worked in California only 110 days, another only 74 days, and another a mere 20 days). After Oracle won a summary

judgment motion as to the California law claims of non-California residents, the plaintiffs appealed, and the United States Court of Appeals for the Ninth Circuit certified three questions to the California Supreme Court pursuant to California Rule of Court 8.548:

- "[D]oes the California Labor Code apply to overtime work performed in California for a California-based employer by out-of-state plaintiffs in the circumstances of this case, such that overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week?"
- "[D]oes [the UCL] apply to the overtime work described in question one?"
- "[D]oes [the UCL] apply to overtime work performed outside California for a California-based employer by out-of-state plaintiffs in the circumstances of this case if the employer failed to comply with the overtime provisions of the FLSA?"

Based on the stipulated facts before it, the Court answered "yes" to the first two questions but "no" the third.

First Certified Question: Overtime Worked Within California by Out-of-State Residents for California Employers

The Court approached this question in two steps: first, whether as a matter of statutory construction California Labor Code §§ 510 and 1194 applied to work performed within California by non-residents; and second, if they do, whether conflict of laws principles allowed such a result to the extent another state also sought to regulate such work. Throughout this analysis, it is important to note that one of the stipulated facts provided that only *full* days and/or weeks were at issue – the possibility of a day spent partially working within California and partially outside of California was not before the Court.

The Court found the statutory construction issue to be fairly straightforward. Section 510 refers on its face to "*any work* in excess of eight hours in one workday and . . . 40 hours in any one workweek" (emphasis by the Court) and Section 1194 refers to "*any employee* receiving less than . . the legal overtime compensation" required by law (emphasis by the Court). The Court also noted that a "preambular section" of the Labor Code indicates that California "employment laws apply to 'all individuals' employed in" California. (California Labor Code § 1171.5 (emphasis by the Court).) Taken together, the Court interpreted this language as reflecting a legislative intent to regulate all work performed in California, since neither of the statutes in question nor the preambular section distinguishes between residents and nonresidents. This silence can be contrasted, for example, with the Legislature's express decision to "exempt[] certain out-of-state employers who temporarily send employees into California from the obligation to comply with the workers' compensation law." (California Labor Code § 3600.5(b).) Additionally, the Court explained at some length that states are traditionally vested with broad authority to regulate working conditions within their borders, and that numerous policy

rationales would support a decision to *not* differentiate between in-state work performed by residents and in-state work performed by non-residents. (For example, failing to apply overtime protections to non-residents could result in a scenario where non-residents are given preferential hiring over residents.) With regard to the conflict of laws analysis, the Court rejected Oracle's argument that the Restatement analysis should be used and instead applied a governmental interest analysis. This analysis consists of three steps: (i) do the jurisdictions at issue have different laws?; (ii) if so, do the laws actually conflict?; and (iii) if the laws do conflict, which jurisdiction's interest would be most impaired if the other jurisdiction's laws were applied? Here, the laws of the various jurisdictions at issue were different – to take one example, only California required overtime if more than eight hours were worked in one workday. Notwithstanding this clear difference (among others), the Court found that the existence of a conflict was "doubtful, at best" since none of the other states at issue appeared to have stated any interest in "regulating overtime work performed in other states," whereas California had indicated a strong interest in regulating overtime work within its borders (see the analysis referenced above). Regardless, even if there was a conflict, the Court concluded that California's legitimate interests would be greatly impaired if a foreign state regulated work within California borders, whereas applying California overtime laws to work performed within its would not impair the foreign state's interests in regulating work performed within their borders.

The Court provided some interesting interpretative guidance while conducting the above analyses. For example, the Court categorically rejected the notion that its prior decision in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996), stood for the proposition that "California overtime law follows California residents wherever they go throughout the United States." Rather, the Court said, *Tidewater* was limited to a fact pattern where an employee temporarily left California during the course of an average workday. The Court also heavily implied that California law might not apply to an employee who temporarily entered California during the course of an average workday. As another example, the Court rejected Oracle's attempts to argue burden on the part of non-California employers – at least in part because Oracle itself *is* a California employer. Oracle had argued with regard to wage statements that it would be extremely burdensome for a non-California employer to have to generate an entirely new pay stub just to comply with California law to the extent an employee entered California for a full workday or workweek. The Court reasoned, however, that since Oracle was a California employer it would not be burdensome to require it to comply with California law. In addition, the Court noted that an out-of-state employer might not be obligated to comply with California's pay stub law to the extent a non-resident employee temporarily entered California (even for a full workday or workweek), since the governmental interest analysis discussed above might have a different result to the extent the issue was pay stub content and not overtime entitlement.

Second and Third Certified Questions: UCL Ramifications

Having established that in-state work by non-resident employees was regulated by California Labor Code §§ 510 and 1194, the Court turned to the two questions pertaining to the UCL.

With regard to in-state work, the Court easily decided that because such work was subject to Sections 510 and 1194, any violation of these sections could support a UCL claim in the same fashion as any other overtime violation, pursuant to *Cortez v. Purolator Air Filtration Products Co*., 23 Cal.4th 163 (2000).

With regard to *out-of-state work*, however, the Court agreed with Oracle that violations of the Fair Labor Standards Act, 29 U.S.C. § 207(a), implicated the "presumption against extraterritorial application" discussed in *Diamond Multimedia Systems, Inc. v. Superior Court (Pass)*, 19 Cal. 4th 1036 (1999). Under this presumption, courts assume that statutes are not intended to reach conduct beyond state borders absent an express indication from the legislature that such a result is desired. Here, the Court found no such express indication pertaining to the UCL. Plaintiffs attempted to evade this presumption by arguing that – since Oracle is headquartered in California – the decision to pay or not pay overtime in other states was presumably made in California, and that therefore the overtime violation occurred within California. The Court rejected this argument, reasoning that "for an employer to adopt an erroneous classification policy is not unlawful in the abstract," and that the actual failure to pay overtime occurred where the employees in question were actually paid. Since the parties' stipulated facts did not address this point the Court declined to "speculate about the place of payment as a basis for holding the UCL does, or does not, apply."