Cooley

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On June 30, 2011, the California Supreme Court in *Sullivan v. Oracle Corp.* decided that California's overtime law covers certain overtime worked in California by nonresident employees of California-based employers.

The *Sullivan v. Oracle Corp.* decision

Under California law, non-exempt employees generally must be compensated at 1½ times the regular rate of pay for hours worked in excess of 8 in a workday, 40 in a workweek, and for the first 8 hours worked on the seventh consecutive workday in a workweek. In addition, they must be compensated at 2 times the regular rate of pay for hours worked in excess of 12 hours in a workday and after the first 8 hours worked on the seventh consecutive workday in a workweek. (Cal. Labor Code, § 510(a) ("Section 510").)

Plaintiffs Donald Sullivan, Deanna Evich and Richard Burkow worked for California-based software company Oracle as "Instructors," training Oracle customers on Oracle products. Sullivan and Evich resided in Colorado and Burkow resided in Arizona. They primarily worked from their home states, but Oracle sometimes required them to provide training in other states, including California. Between 2001 and 2004, Sullivan worked a total of 74 days in California, Evich worked 110 days in California, and Burkow worked 20 days in California. The three plaintiffs sought overtime compensation under California labor laws for the overtime they worked in California between 2001 and 2004.

The California Supreme Court decided that the California legislature must have intended for Section 510 to apply to *all* non-exempt employees working in California, including nonresident employees. The Court's opinion stemmed from the public policies underlying Section 510—protecting employees in a weak bargaining position from overwork, protecting employee health and safety, and expanding the job market by giving employers an economic incentive to spread employment throughout the workforce. The Court reasoned that these policies would be defeated if nonresidents were excluded from the overtime coverage under Section 510, as employers could simply "import unprotected workers from other states."

The California Supreme Court also decided that a California-based company's failure to provide overtime compensation to nonresidents for work performed in California, as required under Section 510, can also trigger liability (requiring restitution of unlawfully withheld wages) under California's Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.).

The undecided questions

The California Supreme Court *did not decide* whether California's overtime laws apply to nonresidents who work in California for out-of-state (as opposed to California-based) businesses. But the opinion did not provide any indication that out-of-state employers would be exempted from following California's overtime laws when their employees are required to perform services in California.

Similarly, the Court *did not decide* whether California overtime coverage applies to employees who only perform partial-day or partial-week work within California.

Conclusion

In light of the California Supreme Court's decision in *Sullivan v. Oracle Corp.,* California-based employers requiring out-of-state non-exempt employees to perform work in California must now comply with California's overtime compensation laws. It remains to be seen whether the same requirements will be imposed on out-of-state employers when their employees work in California and whether other California wage and hour laws will cover nonresidents temporarily performing work in California.

Our attorneys have deep counseling and litigation experience on wage and hour issues. If you would like to

discuss these issues further or have questions about this *Alert,* please contact one of the attorneys listed above.

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