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***Sullivan v. Oracle* – Update and Implications**

This summer, the Supreme Court of California announced that non-resident employees may sue their California-based employer for overtime pay under California Labor Code sections 510 and 1194 based on work they performed in California, even if that work was only on a temporary or short-term basis. The Court suggested, without holding, that the same overtime requirements may apply to non-California employers who send non-resident employees to California on temporary or short-term work assignments.

Employers must now pay careful attention to California labor laws. In particular, California Labor Code section 510 requires employers to pay time-and-a-half for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

In *Sullivan*, plaintiffs worked as customer-training instructors for Oracle, a California-based software company. Plaintiffs worked mainly in their home states of Arizona and Colorado, but frequently traveled to California (and other states) for periods of work ranging from 20 to 110 days. Oracle refused to pay plaintiffs overtime wages for work performed in California because plaintiffs were non-California residents.

Plaintiffs sued Oracle under California Labor Code section 510 for Oracle's failure to pay overtime wages for the days they worked in California in excess of eight hours in one workday and for the weeks they worked in California in excess of 40 hours in any one workweek. Plaintiff's also sought restitution under California's unfair competition law ("UCL"), codified at California Business & Professions Code sections 17200 *et seq.*, for failure to pay overtime wages due under the Labor Code.

The Supreme Court of California was asked to determine whether, as a matter of California law, California Labor Code section 510 applies to overtime work performed entirely in California by non-residents for a California-based employer, such that the employer is required to pay time-and-a-half for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Similarly, the Court was asked to determine whether the UCL applied to violations of California overtime laws (section 510). The Court answered both questions in the affirmative.

As a matter of strict statutory construction, the Court determined that California overtime laws are broadly worded and make no distinction between resident and non-resident workers. Stressing the words "any work" and "any employee," as they appear in section 510, the Court stated 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 further noted that "The Legislature knows how to create exceptions for nonresidents when that is its intent." Thus, the Court concluded: "The California Labor Code does apply to

overtime work performed in California for a California-based employer by out-of-state plaintiffs...such that overtime pay is required for work in excess of eight hours per day or in excess of 40 hours per week.”

As to the second question, the Court determined that because California overtime laws apply to non-residents working in California, the UCL must apply to such work. In allowing unpaid overtime wages to serve as a basis for a UCL claim, the Court declared that “the failure to pay legally required overtime compensation falls within the UCL’s definition of an ‘unlawful...business act or practice.’” Plaintiffs were thus entitled to seek restitution under the UCL.

As a result of the Court’s decision and the broad application of the overtime law to “any work” performed by “any employee” in California, even out-of-state employers may be required to compensate non-California employees who perform temporary or short-term work in California in accordance with the California overtime law. In particular, employers should pay close attention to the California rule that overtime pay is required for work in excess of eight hours in one workday or in excess of 40 hours in any one workweek.

The *Sullivan* decision will likely lead to significant new litigation in California and inevitably to significant new questions about the application of other California Labor Code provisions to out-of-state employees who perform temporary work in California. Employers are thus urged to review their compensation and employee classification practices with counsel.