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WAGE HOUR REPORT
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STAY HOME! Non-Residents Entitled to California Overtime Protection While There, California Supreme Court Rules

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While California is mired in a $25 billion budget deficit, and companies are leaving for greener, business-friendlier pastures like Arizona, Texas, Georgia and North Carolina, the California Supreme Court is doing its best to pile on the regulatory burdens that hurt this state's ability to compete on a national and global scale. In ***Sullivan v. Oracle Corporation***, the California Supreme Court held that non-resident employees who perform work in this state, even for periods as short as a single day, are protected by California's overtime laws. As a result of this decision, we recommend that out-of-state employers seriously consider allowing only employees who are exempt under the California standards (which are more difficult for employers to meet than the exemption standards under the federal Fair Labor Standards Act) to travel to the state on business.

The three plaintiffs were instructors for California-based Oracle, but they lived and usually worked in the states of Arizona and Colorado. However, they periodically came to California to provide instruction to the company's customers in use of the company's products. At one time, Oracle had classified all of its instructors as exempt from overtime but later reclassified them as non-exempt and settled a wage-hour class action. The three plaintiffs had been dismissed from the class action because they were not residents of California.

The three plaintiffs then filed their own suit against Oracle in a federal court in California, seeking overtime under the FLSA for work performed outside California and overtime under the California Labor Code for work performed in California. The company won summary judgment. The U.S. Court of Appeals for the Ninth Circuit reversed in part but then withdrew its decision, and asked the California Supreme Court to rule on the state overtime issue.

Under California law, a non-exempt employee is entitled to overtime, not only for hours worked in excess of 40 in a single workweek, but also for hours worked in excess of 8 in a single day. The FLSA does not provide for daily overtime. California's unfair business practice law can extend the statute of limitations to four years, compared with the FLSA statute of limitations of only two years for non-willful violations.

In its analysis of the application of daily and weekly overtime laws, the California Supreme Court looked to the plain language of the statute and whether there is a significant conflict of law with other jurisdictions. The Court initiated its analysis with the foreboding statement – "California's overtime laws apply by their terms to all employment in the state, without reference to the employee's place of residence." The remaining discussion was dedicated to shooting down Oracle's common-sense arguments that adoption of the plaintiffs' position would impose extreme burdens on multi-state employers.

The Court emphasized that its decision applied only to the payment of overtime compensation and that other employment laws would have to be analyzed separately. Further, the

Court emphasized that its decision was affected by the fact that Oracle was based in California. It is unknown what the decision would be if the employer did not have a significant presence in California. The conclusion remains, however, that if a non-resident employee performs work in California for a complete day or more, the daily overtime protections will apply and the employer's failure to compensate accordingly will create a claim for up to four years.

The Court determined that it had jurisdiction over the issue because California had a duty to regulate any work performed within its borders. The Court also noted that neither Arizona nor Colorado had specified that their employment laws were intended to supplant other states' laws. This seems to be an invitation to business-friendly states to revise their wage and hour laws to specify that work performed by their residents out of the state would be subject to the home state's overtime regulatory scheme.

Finally, the Court left open the possibility that Oracle could be liable under the state's unfair competition law for failure to pay for overtime as required by California law for work performed in California.

This decision is expected to have exactly the effect that Oracle has argued it will have – causing even more damage to California's already-struggling economy. Out-of-state employers will be reluctant to send non-exempt employees to California for any kind of business – whether direct business, or conventions, conferences, or training. Business and events such as these often entail compensable activities outside normal working hours, which will make the out-of-state employers vulnerable to California overtime claims. Given this risk, it will make more sense for employers to send their non-exempt employees elsewhere.

All companies, whether based in California or not, should review the travel plans of their employees. Until an internal analysis is completed, companies should seriously consider banning employee travel to California unless it is certain that the employee is "exempt" from the California overtime provisions. Again, employers should note that California's standards for determining overtime exemption are more demanding (less employer-friendly) than the standards that apply under the FLSA.

If you have a question about the Oracle decision, the California Labor Code or unfair competition law, or how these may apply to your employees, please contact any attorney in Constangy's **Los Angeles County** or **Ventura County** offices, or the Constangy attorney of your choice.