

Ninth Circuit Holds That California Labor Code Applies to Work Performed in California by Nonresidents

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In a case with potentially far-reaching implications for California and non-California employers alike—*Sullivan v. Oracle Corporation*, 08 C.D.O.S. 13881 (9th Cir. Nov. 6, 2008)—the Ninth Circuit held that the requirements of the California Labor Code applied to work performed by non-California residents in California. The Ninth Circuit held that Oracle—a California employer—must pay out-of-state employees under California’s rules if they worked overtime *in* California. The court left open the question of whether its holding could also extend to *non*-California employers.

Oracle is a software company with its headquarters and principal place of business in California. It has employed numerous “instructors” across the country to train the company’s customers in the use of its software. These instructors did not have a fixed assignment; rather, they could be asked to perform work in any state. For a number of years Oracle classified its instructors as exempt from state and federal overtime provisions. However, Oracle reclassified those instructors who lived in California as nonexempt and began paying them overtime under the California Labor Code, including “daily” overtime. Oracle also reclassified its instructors outside of California as nonexempt and began paying them overtime under the federal Fair Labor Standards Act (FLSA).

The three plaintiffs who brought suit were residents of Arizona and Colorado. They had worked as instructors for Oracle in their home states, but occasionally (5 to 36 days per year) they trained customers in California. They sued Oracle in California state court to recover daily overtime for the full days they worked in California. Specifically, they alleged that Oracle violated California Labor Code Section 510(a) by failing to pay overtime for work they performed beyond eight hours a day while in California. They also alleged that this failure was an unfair business practice and violated California Business & Professions Code Section 17200 (Section 17200). Finally, the plaintiffs alleged a different and separate violation of Section 17200, claiming that Oracle’s alleged failure to pay overtime for work performed *outside of California* pursuant to the FLSA was also an unfair business practice under California law.

Oracle moved the case to the federal district court. The district court granted summary judgment for Oracle and held that California’s Labor Code provisions do *not* apply to nonresidents who only periodically perform work in California. The district court concluded that applying the California Labor Code to work performed in California by nonresidents would violate the Due Process Clause of the Fourteenth Amendment. The plaintiffs appealed and the Ninth Circuit reversed as to the plaintiffs’ overtime claims for work performed *in California*. The Ninth Circuit disagreed, affirming summary

judgment for Oracle only as to the plaintiffs' Section 17200 claim for work performed outside of California.

California Has a Strong Interest in Applying Its Labor Code Provisions to Work Performed Even by Nonresidents in California

In analyzing whether the California Labor Code applies to work performed in California by non-California residents, the Ninth Circuit applied California's choice-of-law rules. Under California's choice-of-law rules, the court first determines whether California law and the potentially applicable law of another state are "materially" different. If the laws *are* materially different, the court must then determine "what interest, if any, each state has in having its own law applied to the case." Finally, if the laws are materially different and each state has an interest in having its own law applied, the court must "select the law of the state whose interests would be 'more impaired' if its laws were not applied." Following these analytical steps, the Ninth Circuit first held that the potentially applicable laws of the three states at issue—California, Colorado, and Arizona—are materially different as to overtime. The California Labor Code provides that employers must pay overtime for work *in excess of eight hours in one day*, as well as for work in excess of 40 hours in one week, and double-time pay for work *in excess of 12 hours in one day*. California law also requires that the first eight hours worked on the seventh day of work in any one workweek be compensated at one and one-half times the regular rate of pay for the employee.

The Ninth Circuit noted that the overtime laws of Colorado and Arizona are less protective than—and thus "materially different" from—the overtime laws of California. Although Colorado law also allows for "daily" overtime, it only requires one and one-half times regular pay when an employee works more than 12 hours in a day or more than 40 hours in a week. Also, it does not require double-time pay under any circumstances nor does it require overtime pay for work on the seventh consecutive day in one week. Arizona does not have any state overtime law; the FLSA is the only law offering protections to workers there.

After finding that the laws of the three states were materially different, the Ninth Circuit then turned to the question of "what interest, if any, each state has in having its own law applied to the case." The Ninth Circuit found that California has "a clear interest" in ensuring that the work of *its own residents* is fairly compensated, citing California Labor Code Section 90.5(a) ("It is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards."). The Ninth Circuit reasoned that this interest would extend to the compensation of nonresidents working in California because "[i]f a California employer may avoid the requirements of the state Labor Code by the simple expedient of hiring nonresidents, *California residents will be substantially disadvantaged* in the labor market by the cheaper labor that will thereby be made available to California employers" (emphasis added). In fact, said the court flatly, "the California Labor Code is clearly intended to apply to work done in California by nonresidents."

For this proposition, the Ninth Circuit cited the California Supreme Court's decision in *Tidewater Marine Western v. Bradshaw*, 14 Cal. 4th 557 (Cal. 1996). In *Tidewater Marine*, the California Supreme Court held that the provisions of the California Labor Code did apply to California residents who work at sea on oil-drilling platforms in the Santa Barbara Channel. The California Supreme Court said that "California employment laws implicitly extend to employment occurring within California's state law

boundaries.” Oracle pointed to another statement in *Tidewater Marine* in support of its position: “If an employee resides in California, receives pay in California, and works exclusively, or principally, in California, then that employee is a ‘wage earner of California’ and presumptively enjoys the protection of . . . regulations [promulgated by the California Industrial Welfare Commission under the Labor Code].” *Id.* at 578. This language was used as authority for the proposition that the California Labor Code does *not* apply to non-California residents. The Ninth Circuit, however, held that the opposite inference should be made, i.e., that an “in-state employer’s employees coming into California for entire workdays and workweeks is not a marginal case.”

The Ninth Circuit did note the *Tidewater Marine* court’s speculation that the California legislature “may not have intended” the Labor Code to apply to “*out-of-state businesses* employing nonresidents, though the nonresident employees enter California temporarily during the course of the workday.” *Id.* (emphasis added) This portion of the Ninth Circuit’s opinion certainly suggests that the California Labor Code may *not* apply to work by nonresidents if the employer’s principal place of business is *not* in California. However, that question was not decided in *Sullivan*.

In assessing relative interest, the Ninth Circuit noted that, unlike California, Colorado has provided no protection in its overtime regulations for its workers performing work outside Colorado. Thus, the Ninth Circuit reasoned that “the interests expressed generally in Colorado’s minimum wage statute are not significant here, where the only work at issue was performed in California.” Similarly, the Ninth Circuit concluded that Arizona, having failed to enact any state laws at all regulating overtime work, “has thus expressed no interest in the wages paid to its residents except such interest as is expressed in the FLSA.”

Finally, the Ninth Circuit stated that, even if Colorado and Arizona had an interest in the compensation of its residents when they work in other states, those interests would not conflict with California’s interest in applying its Labor Code provisions to nonresidents performing work in California. As the court noted, “California Labor Code is by any measure the most advantageous to the employee.” Indeed, the Ninth Circuit explained, Colorado and Arizona should have an affirmative interest in applying California law when their residents perform work in California. Because it concluded that neither Colorado nor Arizona had any substantial interest in applying its own wage laws to the work the plaintiffs performed in California, the Ninth Circuit did not discuss the third question in the choice-of-law analysis of which state’s interests would be more “impaired” if its laws are not applied.

The Due Process Clause and Commerce Clause Do Not Impose Any Constitutional Constraints in Applying California’s Labor Code to the Plaintiffs’ Work in California

On appeal, Oracle argued that applying California’s Labor Code to the plaintiffs’ work in California would violate the Due Process Clause of the Fourteenth Amendment and the Commerce Clause. The Ninth Circuit rejected both arguments.

With regard to the Due Process Clause, the Ninth Circuit stated that application of a state’s substantive law to another state’s residents is constitutional so long as the state taking action has significant contacts with the nonresidents or an aggregation of contacts that would make application of the state’s laws neither arbitrary nor fundamentally unfair. The court concluded that California’s contacts with these two nonresidents were sufficient to permit the application of the California Labor Code to their claims. Key to that analysis was the fact that Oracle’s headquarters and principal place of business are in California, the decision to classify these nonresidents as exempt from overtime was made in California, and the plaintiffs performed the work in question in California. Again, a different outcome arguably might result if the defendant were headquartered outside of California.

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