

## Plaintiffs score wage-and-hour win

*Supreme Court held that out-of-state employees doing work in California must be paid in accordance with state overtime laws*



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### Labor and Employment Law

In *Sullivan v. Oracle*, 11 C.D.O.S. 8243, the California Supreme Court resolved a hotly contested question about the reach of California's overtime wage law. The court held that the overtime law applies to nonresident employees of a California-based employer who perform at least a full day's work in California. This unanimous decision also has important implications for employers based in other states that send employees into California to work for a full day or more. These employers should expect their employees to argue, based on *Sullivan*, that they too are covered by California's overtime wage laws.

In *Sullivan*, the Ninth Circuit U.S. Court of Appeals asked the California Supreme Court to decide whether California's overtime laws applied to three nonresident employees of Oracle Corp., which is based in California. The employees were residents of either Colorado or Arizona, and had worked in California for varying periods during 2001 to 2004. The Supreme Court held that the relevant provisions of the California Labor Code unambiguously apply to "any employee" without regard to residency status. The

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court also observed that although the Legislature has exempted nonresident employees from other Labor Code provisions, it did not do so in the overtime laws.

The Supreme Court further held — after conducting the governmental interest conflict-of-law analysis — that California law applied to the three employees involved. This test has particular importance for this category of cases because it normally will favor application of California law where that law embodies a strong public policy and the state has a clear interest in applying its law. Under this test, the court first determines whether the laws of states with an interest in the dispute are in conflict. Next, assuming a conflict exists, the court analyzes whether there is a "true conflict," which requires a determination whether each state has an interest in applying its law to the dispute. Finally, assuming a "true conflict" exists, the court decides which law to apply by determining which state's interest would be more impaired if its law were not applied.

In *Sullivan*, the Supreme Court first observed that California overtime law differed from the laws of Colorado and Arizona. Unlike California, neither of these states requires payment of overtime for more than eight hours of work on any given day. However, the court strongly doubted whether a "true conflict" existed. On the one hand, California has plainly articulated a strong interest in applying its overtime wage laws to all nonexempt employees performing work within California. On the other, Colorado's overtime law expressly applies only to work performed within that state, and Arizona simply follows the federal Fair Labor Standards Act by default because it lacks a state overtime law. The court noted further that Colorado's and

Arizona's assumed interest in fostering a business-friendly environment would not apply to work performed in other jurisdictions. The court also concluded that even if a "true conflict" existed, California's interest would be more impaired if its law were not applied. California's interests consist of "protecting health and safety and preventing the evils associated with overwork," as well as discouraging employers from substituting lower paid nonresident employees for resident employees.

The court rejected Oracle's principal arguments, which included the assertion that the Legislature would not likely have intended that California's wage laws would apply to visiting, nonresident employees. Citing the practical burdens that employers would face in complying with the requirements of various states regarding overtime pay and other wage laws, Oracle argued that application of California's overtime law to nonresident employees could impose an unconstitutional burden on interstate commerce. The court dismissed this concern, emphasizing that it was deciding only the question of the applicability of the overtime wage law, and that it would not assume that the outcome of a conflict-of-laws analysis would be the same with respect to the other California wage laws Oracle discussed. Further, the court asserted that Oracle's argument about the burdens involved was "entirely conjectural," given that Oracle is based in California and that the stipulated facts presented as part of the certified question provided no support for its argument.

*Sullivan* also decided two subsidiary questions regarding the applicability of California's Unfair Competition Law (UCL, Bus. & Prof. Code §17200 *et seq.*). First, the court reaffirmed the existing law that the UCL applies to an employ-

er's failure to pay required overtime wages. Second, the court held that the UCL does not apply to an employer's failure to comply with the FLSA's overtime wage requirements for work performed in other states. On this second issue, the court held that the UCL would not apply merely because California was the location of Oracle's allegedly erroneous decision to categorize the employees as exempt from overtime requirements. The court held that a FLSA violation occurs when the employer fails to pay overtime wages when due, and in this regard the record did not establish whether California was the place of payment for the employees involved. Resolution of that factual issue, the court explained, implicated questions of federal summary judgment procedure that were not appropriate for it to decide. Although *Sullivan* implies that neither the employer's principal place of business nor the employer's state of residence is dispositive of the place of payment issue, the decision does not provide guidance on what other factors are relevant to that question.

After *Sullivan*, California-based employers that bring nonresident employees into the state for a day or more must expect to pay those employees according to California's overtime laws for work performed in California. For such employers, it is most likely that the required conflict-of-law analysis would result in the application of California law, in light of these employers' connection with the state and California's strong and expressed interest in "protecting health and safety and preventing the evils associated with overwork." Under *Sullivan*, consequently, nonexempt employees will be entitled to daily overtime — a requirement that does not exist in most other states, as was the case under the Colorado and Arizona laws *Sullivan* examined. Also, while the high court limited its holding to overtime pay, employers and employees alike will need to seek legal advice regarding the application of other California wage-and-hour protections to nonresidents who work in California. The conflict-of-law analysis could differ as to these other laws, depending on how a court views the interests of California and

the other states in applying the law.

Finally, while *Sullivan's* specific holding is limited to California-based employers, employees of businesses based in other states are likely to argue that its rationale applies to any nonresident employee who would become subject to California's overtime law by performing at least a full day's work within the state. *Sullivan* directly supports part of this argument, given its holding that California's overtime law applies without regard to the residence of the employees involved. However, *Sullivan* does not ensure a decision in favor of nonresident employees. To prevail, they still would have to demonstrate that California law applies based on the conflict-of-law analysis in *Sullivan*. While the employer's non-California principal place of business should strengthen its argument that California law should not apply, its employees are certain to argue that California's interest remains paramount, given that it rests primarily on the goal of protecting all nonexempt employees who perform work within its borders.