

## Interstate Employees: Which States' Laws Apply?

*Sullivan v. Oracle Corp.*, \_\_ P.3d \_\_ (Cal. 2011)

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Many companies, both large and small, hire employees to perform work outside of the employee's, or the company's, home state. For example, a Nebraska company located in Lincoln might hire a Coloradan to do consulting work for clients in western Nebraska. Likewise, a Nebraska company might hire a Nebraskan to do work that regularly requires the employee to travel to New York or Chicago. Although hiring employees under such circumstances may not initially seem noteworthy, recent court decisions have raised questions regarding the impact of these interstate work duties, particularly with respect to which law governs overtime pay and other labor law restrictions or requirements.

The question of which law governs interstate work was partially addressed in a recent case from the California Supreme Court. In *Sullivan v. Oracle Corporation*, \_\_ P.3d \_\_ (Cal. 2011), the California Supreme Court, upon being asked to address the question by the Ninth Circuit Court of Appeals, considered whether out-of-state employees should be paid overtime for hours worked in California in accordance with California overtime statutes. Three employees of Oracle Corporation, a California-based software corporation, lived outside of California – two lived in Colorado, and one lived in Arizona.

Employed as "Instructors," their jobs required them to travel into California to perform some of their work duties.<sup>1</sup> While working in California, the employees accumulated hours that would be subject to the overtime provisions of California statute if those provisions applied to work done by non-residents in California. The employer, however, failed to pay the overtime required under California law and instead argued that the employees should be paid overtime in accordance with the laws of their home states of Colorado and Arizona.

<sup>1</sup> One worked 74 days in California during the time period relevant to the case; one worked 110 days in California during the time period relevant to the case; and one worked only 20 days in California during the time period relevant to the case.

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In determining whether the California statutes controlled overtime pay for the employees, the court applied its general rules of statutory construction, focusing on the plain language of the statutes. Specifically, the court latched onto the statutes' use of the phrases "any work," "any employee," and "any individual." This language, according to the court, was meant to "regulate all nonexempt overtime work within California's borders without regard to the employee's residence . . . ." Such regulation was neither capricious nor improper. In fact, the court noted that this intent to regulate *all work* within the state's borders made sense because "[t]o exclude nonresidents from the overtime laws' protection would tend to defeat their purpose [of protecting people working in California] by encouraging employers to import unprotected workers from other states." Ultimately, the court determined that the California overtime provisions applied to work done for a California-based employer by an out-of-state employee within California's borders.

It should be noted, however, that the court limited its holding to California-based employers hiring out-of-state workers, and refused to answer the question of whether labor laws other than the overtime provisions would apply. Nevertheless, the court's broad interpretation of the California statutes, and its emphasis on the statutes' application to "any work" in the state, suggests that out-of-state companies may also be subject to California wage laws if employees travel there to perform work duties.

#### **Lesson:**

By no means is the California Supreme Court's opinion dispositive of how other states might apply their labor laws. The recent decision simply serves to illustrate some relevant issues and to shed light on some lingering questions – e.g., whether a Nebraska company would be subject to California labor laws if the Nebraska company's employees traveled to California for work.

*Sullivan v. Oracle Corporation* is an example of how an employer with employees who travel from state to state to perform their work duties needs to be aware of various states' employment and labor laws. Employers with employees that travel between states to perform their work duties should be cautious when determining company policy with respect to overtime pay and other employment policies. Depending on the circumstances and the states in question, an employer may find themselves subject to a foreign state's labor laws, giving rise to a number of potential legal dilemmas.

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