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California Employment Law Update

Cathy L. Arias and Elizabeth J. Boca **July 2011**

California Overtime Laws Apply to Nonresidents Working In State

California employers took another blow in a recent ruling by the California Supreme Court, where it held it is a violation of the California Labor Code and unfair competition laws for California employers to not pay non-resident employees premium overtime pay when they periodically work within the State. *Donald Sullivan v Oracle Corporation et al* SC S170577 (Cal. June 30, 2011).

The *Sullivan* matter involved three employees who resided out-of-state and worked as "instructors" for Oracle primarily outside of California. During their employment, the instructors periodically traveled to California to provide training to Oracle customers, and worked more than eight hours in one day or forty hours in one week within California; however, Oracle did not pay plaintiffs premium pay for any overtime worked.

The California Supreme Court concluded (1) that the California Labor Code's overtime laws apply to a California employer who employs a nonexempt out-of-state employee who works more than eight hours in one day or forty hours in one week within the State; (2) that an employer's violation of the Labor Code in this regard gives rise to a claim for violation of California's unfair competition laws (UCL) under Business and Professions Code Section 17200.[1] However, the Court gave employers a small victory and ruled that, (3) if the non-California resident's overtime work for the California company is performed entirely outside California, claims under the federal Fair Labor Standards Act cannot serve as predicates for UCL claims.

What is Next?

In deciding the case, the Supreme Court noted that a preambular section of the wage law confirms that California's employment laws, protections, rights and remedies apply to "all individuals" employed in California. (*See* Labor Code Section 1171, and 1171.5).

However, the Court expressly noted that it was not deciding the applicability of any other provision of California wage law, because no such question was before the Court. Nevertheless, it is quite possible this decision foreshadows the future of litigation against California employers who employ out-of-state residents to work within California. So, what could be next? Requiring employers to provide California Labor Code compliant meal and rest periods? Requiring employers to provide California Labor Code Complaint pay check stubs if the employee works within California during that pay period? Providing a final paycheck within the time period required by California law if the employee worked within the State during the employee's final pay period? Based on the decision in *Sullivan*, this is all quite possible.

[1] This claim increases the statute of limitations to four (4) years.

It is recommended that all employers who employ non-resident employees within the State of California follow best practices, such as:

- If you have any exempt non-resident employees working in California, make sure they would be considered exempt under California law. This is a complex analysis and it is advisable to have legal counsel assist you in this determination.

- For all non-exempt non-resident employees:

    - Pay premium overtime pay if the employee works more than eight hours in a day or forty hours in a week within the State of California. This is currently required by the decision in *Sullivan*.

    - Comply with all other Labor Codes as if the employee was a resident of California when the employee is working within the State, including: providing proper rest periods, uninterrupted meal periods, proper paycheck stubs and timely final paychecks upon the ending of the employment.

- Retain an experienced employment attorney to assist the business in navigating California's ever-evolving Labor Laws and keep you up-to-date on these and other cases.

Cathy L. Arias is the Chair of Burnham Brown's Employment Law Department and specializes in counseling and representing employers. Ms. Arias can be reached at 510-835-6806 and carias@burnhambrown.com. Elizabeth J. Boca is a member of Burnham Brown's Employment Law Department and specializes in employment litigation and can be reached at 510-835-6814 and eboca@burnhambrown.com