

Ninth Circuit Withdraws Opinion Regarding Non-California Resident Overtime Case

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In *Sullivan v. Oracle Corporation*, 547 F.3d 1177 (9th Cir. 2008), the Ninth Circuit Court of Appeals issued a controversial opinion, holding that non-California residents who perform work in California, even on short-term assignments, are protected by California labor laws. On February 17, 2009, the Ninth Circuit Court of Appeals withdrew its opinion in *Sullivan* and asked for guidance from the California Supreme Court on the issues presented in the case.

The *Sullivan* plaintiffs were instructors employed by Oracle to train customers on its software. The instructors traveled to different states, including California, where they worked no more than 36 days in any calendar year. The plaintiffs alleged that Oracle misclassified them as exempt and failed to pay them daily and weekly overtime for the full days they worked in California.

The Ninth Circuit held that California's wage and hour laws, including the daily overtime requirement, applied to the work performed in California by the plaintiffs, even if they were non-residents and the work was sporadic.

The Ninth Circuit certified the following three questions to the California Supreme Court:

1. Does the California Labor Code apply to overtime work performed in California for a California-based employer by out-of-state plaintiffs in the circumstances of this case, such that overtime pay is required for work in excess of eight hours per day or in excess of 40 hours per week?
2. Does California Business and Professions Code § 17200 (Unfair Competition Law) apply to the overtime work described in question one?

3. Does § 17200 (Unfair Competition Law) apply to overtime work performed outside California for a California-based employer by out-of-state plaintiffs in the circumstances of this case if the employer failed to comply with the overtime provisions of the Fair Labor Standards Act?

If the California Supreme Court decides any or all of the certified questions, the Ninth Circuit will accept and rely on that decision in any further proceedings.

The Supreme Court's review of these questions should provide employers with a clear understanding of the requirements for timekeeping and payment of non-California residents who work temporarily in California.

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