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Calif.'s Oracle Case Spurs Cos. To Offer More Than Just OT

By Erin Coe

Law360, San Diego (June 04, 2013, 10:33 PM ET) -- Nearly two years after the California Supreme Court held in a proposed class action against Oracle Corp. that out-of-state residents temporarily working in the Golden State can recover unpaid overtime under California law, some employers have begun providing visiting workers with meal and rest breaks and other state labor code perks in a bid to preempt suits aimed at extending the scope of the Oracle ruling, lawyers say.

On June 30, 2011, the **state's high court found** that extending California's overtime protections to all employees in the state, regardless of their places of residence, would further the public interest. The ruling answered questions certified from the Ninth Circuit, which **later that year reversed** part of a district court's summary judgment in favor of Oracle and remanded the case brought by Donald Sullivan and other out-of-state Oracle software instructors back to California federal court. The district court closed the case in November 2012 after the parties stipulated to its dismissal.

The Oracle case left open the questions of whether the ruling applied to both California-based companies like Oracle and companies with operations in the state but headquarters elsewhere, and whether it applied to other state labor law provisions beyond overtime, according to lawyers.

"The California Supreme Court tried to render the decision narrowly, but it has led to confusion in the employment community over how to structure policies to make sure they comply with the next case that comes up where a plaintiff seeks to take the Sullivan decision to the next level," said Geoffrey DeBoskey, a partner at Sidley Austin LLP.

Planning for the possibility of litigation over the decision's unresolved issues, some companies based in California and elsewhere are opting to take an extremely conservative approach by making sure not just that employees working for stints in California receive overtime under state law, but also that they are subject to meal and rest breaks, vacation accrual, pay stubs and reimbursement stubs in line with the state's employee-friendly requirements usually reserved for California workers, according to lawyers.

"Most of the major corporations I work with have implemented or are developing policies around Sullivan," DeBoskey said. "For those employees traveling to California for a significant period of time, a lot of companies are subjecting them to California pay policies in general rather than just overtime."

He added that he had completed one project for a client where it had to develop a new set of training materials and different administrative methods to accommodate a group of employees who may at some point travel to California and would be entitled to California pay policies.

“It required the creation of a completely different set of policies just for these employees,” he said.

Michael Amir, co-founder of Doll Amir & Eley LLP, has advised clients to make sure the pay stubs they provide to visiting workers comply with California law, which requires certain information to be included in wage statements that goes beyond federal standards.

“In a wage-and-hour suit, plaintiffs typically throw in the kitchen sink, and this is one of the things they tend to throw in — alleging that pay stubs are not compliant,” he said.

The Oracle ruling also didn't answer how long visiting employees had to be working in California before they became subject to state overtime law, and some companies are taking a conservative approach on this issue as well, according to DeBoskey.

“I’ve seen a situation where the employee has to be in California for a minimum of one two-week pay period,” he said. “I’ve also seen a company say employees who are in California for a day are subject to state rules.”

When the California Supreme Court handed down the Oracle ruling in 2011, employers worried that it would trigger a wave of litigation by visiting employees claiming they should be covered by state pay policies beyond overtime, but attorneys haven’t seen plaintiffs rush to the courthouse on this issue — at least not yet.

“If you’re a plaintiffs lawyer, California is like walking into a giant cafeteria buffet with many different laws that offer causes of action upon which an employee can sue,” said Harry Johnson III, an Arent Fox LLP partner. “Why would plaintiffs lawyers necessarily go over to the Sullivan meal station when there’s a lot of other stuff going on?”

The fact that the Oracle ruling focuses only on out-of-state workers traveling for a period of time to California also may explain why there has not been a deluge of follow-on cases, according to Rex Heinke, co-head of the Supreme Court and appellate practice at Akin Gump Strauss Hauer & Feld LLP.

“Employees have be based out of state, work in California and work enough hours that they would be entitled to overtime,” he said. “They have to jump through all those hoops, and I doubt that there are many employees who fit all those criteria.”

However, attorneys say it's only a matter of time before employers see significant cases starting to work their way through the court system that seek to test how far the Oracle ruling stretches.

“Companies need to consult with their counsel and develop policies and protocols for how they handle employees outside California who travel to the state,” DeBoskey said. “A company will be in a better position to defend itself against claims, particularly class action claims, if it has lawful policies, trained people to comply with the policies and developed mechanisms to implement those policies."

Johnson said he could see courts relying on the Oracle ruling on overtime to extend it to other employment claims, similar to how the California Supreme Court’s 2000 ruling in Armendariz v. Foundation Health Psychcare Services Inc. that put restrictions on when employers could arbitrate sexual harassment claims was eventually used to limit arbitration for other claims.

“I would not be surprised if the courts apply meal and rest breaks to visiting employees under the Sullivan v. Oracle rule,” he said. “California has a strong statutory policy in favor of giving people meal and rest breaks, just like, for example, accruing overtime on a daily basis rather than a weekly basis.”

While the Oracle ruling has led some companies to change how they pay workers who visit the state, other companies are simply becoming much less willing to have their employees travel to California at all, according to DeBoskey.

“The Oracle ruling is another example of how California can be a very challenging business environment for companies that want to have a meaningful presence in the state,” he said. “It may be easier for a company to say that it wants less to do with California altogether, and that’s a problem for the state.”

--Editing by Elizabeth Bowen and Chris Yates.