

## CLIENT ALERT

### Ninth Circuit Withdraws *Sullivan v. Oracle* Decision Applying California Labor Laws To Non-California Residents

February 20, 2009

On February 17, 2009, a panel of the Ninth Circuit issued an order withdrawing its controversial opinion in *Sullivan v. Oracle Corp.*, 547 F.3d 1177 (9th Cir. 2008). In withdrawing its opinion, the Ninth Circuit asked the California Supreme Court to decide the following issues raised in *Sullivan*:

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 forty hours per week?
2. Does Business & Professions Code § 17200 apply to the overtime work described in question one?
3. Does § 17200 apply to overtime work performed outside California for a California-based employer by out-of-state employees in the circumstances of this case if the employer failed to comply with the overtime provisions of the Fair Labor Standards Act?

In a decision that had drawn significant criticism from the business community, a panel of Judges Fletcher, Gould and Pollak held in *Sullivan* that California's overtime requirements apply to work performed by non-California residents within the state, even if such work was only performed on a temporary basis. After the decision, Oracle filed a petition for rehearing en banc, supported by amicus briefs filed by the California Employment Law Council, the California Restaurant Association, and the Employers' Group.

In withdrawing its opinion and requesting guidance from the California Supreme Court, the panel of Ninth Circuit judges noted the practical significance that these questions will have on California employers. It stated that "[a] large but undetermined number of California-based employers employ out-of-state residents to perform work in California. If those workers are covered by the overtime provisions of the California Labor Code, this will have an appreciable economic impact on these employers and employees."

All employers with employees who are based outside of California but may travel to California for projects, training or other work should stay tuned for the forthcoming guidance from the California Supreme Court.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Kris D. Meade**

Partner – Washington, D.C.

Phone: +1.202.624.2854

Email: [kmeade@crowell.com](mailto:kmeade@crowell.com)