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## Wage Laws Apply To Out of State Workers Working In CA

California business owners have to contend with some of the nation's toughest and costliest overtime pay regulations. A recent federal court decision involving software maker Oracle Corporation has extended these protections to any out of state resident who works in California for as little as a day. If your business brings out of state employees into California from time to time, you need to familiarize yourself with this ruling.

Oracle employs hundreds of workers throughout the United States to train Oracle customers in the use of its software. During the period of time at issue in the case, Oracle considered these instructors to be exempt from federal and state overtime pay regulations. Three non-residents of California brought a would be class action against Oracle seeking damages under California law for the company's failure to pay them overtime pay when they performed services in California.

The three employees who filed suit were residents of Colorado and Arizona. Though the vast majority of their work was performed in their home state, from time to time they worked in California. According to court papers, this occurred as little as one or two days a month. They nevertheless sued Oracle to recover overtime wages under California law for the days they worked within the State.

The court initially dismissed their claim. Siding with Oracle, the court concluded that non residents who only work in California occasionally do not enjoy the many protections afforded to the State's residents under our generous overtime pay regulations.

The three workers appealed that ruling to the Ninth Circuit U.S. Court of Appeals in San Francisco. The Ninth Circuit disagreed with the lower court's ruling and reinstated the case. The Court of Appeals ruled that California's overtime laws do indeed apply to non-residents like these when they perform work within the State. The ruling clears the way for them to sue Oracle for unpaid overtime pay utilizing California's generous over-



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time pay statute.

In reaching this conclusion, the Court of Appeals reminded California businesses of the significant protections afforded to employees under the California Labor Code – protections that many states (like Colorado and Arizona) and even the federal government do not provide. For example, the California Labor Code mandates the payment of daily overtime pay at 1.5 times the employee's hourly rate of pay whenever an overtime eligible employee works in excess of 8 hours and for the first eight hours on the seventh day of work in the

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pay week. That rate goes to 2 times the employee's regular hourly rate for any hours worked in excess of 12 hours in a day and for any hours in excess of 8 on the seventh day in the workweek.

The Ninth Circuit also made clear that this ruling was necessary to protect California residents from employers that might see a contrary ruling as an invitation to displace higher paid California workers with less expensive

non-resident labor. According to the Court, if a California employer may avoid the requirements of the state Labor Code by the simple expedient of hiring non-residents, California residents will be substantially disadvantaged in the labor market by the cheaper labor that will thereby be made available to California employers.

Aside from the back wages, California law authorizes penalties for the non-payment of wages and where the business did not properly record all hours worked in the company's pay records. These penalties can add up quickly since most businesses rarely keep such records for their overtime exempt staffers. State law also permits the employees to recover their legal fees if successful in pursuing a wage claim. Since the vast majority of these cases ultimately are resolved via an out of court settlement, the employees' legal fees are always a part of the settlement when a suit has been filed. Often, the employee's legal fees far exceed anything that the individual employee will recover.

The Oracle decision is yet another reason why every California business must ensure that employees are correctly classified for overtime pay purposes and receive all of the overtime pay they deserve. With the New Year approaching, business owners should resolve to hire a labor lawyer expert in wage hour matters to perform a comprehensive overtime pay compliance audit. If a labor lawyer is involved in the process, your internal deliberations and analysis will be protected from later disclosure by the attorney-client privilege. If problems are found, consider correcting the deficiencies before a costly suit is filed.

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