

Labor Law: Overtime Payments

Sullivan v. Oracle Corporation

Facts: Defendant is a Delaware Corporation with its principal place of business in California. Plaintiffs are employed by Defendant as Instructors. Instructors are required to travel throughout the United States, including California, to perform work for Oracle. The Plaintiffs resided in Colorado and Arizona, but worked in California from 2001 through 2004. None of the Plaintiffs worked more than 33 days in California in any given year. Plaintiffs filed a Complaint alleging claims for violation of the Labor Code and California's Unfair Competition Law for failing to pay overtime wages for the days they worked in California, and a third claim for failing to pay overtime throughout the United States. Defendant filed a motion for summary judgment and argued that California labor laws do not apply to non-residents who work primarily in other states. The District court granted summary judgment.

Holding: Reversed in part. California's Labor Code applies to work performed in California by nonresidents of California. The Ninth Circuit applied California state law, where the Supreme Court has previously ruled that California's employment laws govern all work performed within the state, regardless of the residence or domicile of the worker.

School Districts: 39 Month List

Tucker v. Grossmont Union High School Dist.

Facts: Plaintiff was hired by Defendant in 1996 as the Director of Maintenance and Operations and eventually became the Director of Operations, Safety, and Special Projects. In 2004, the District asked a Fiscal Crisis and Management Team to review its classified management structure. The team recommended eliminating Plaintiff's position to reduce expenditures, and Plaintiff was laid off effective in April 2005. The same month, Plaintiff applied for the position of Maintenance Manager, which was in a lower class than Plaintiff's previous position. The job was given to an individual who applied from outside of the District. Plaintiff petitioned for writ of mandate, stating that the District violated his right to reemployment under Education Code § 45298, which places a laid-off employee on a reemployment list for 39 months, giving them preference over new applicants. The superior court found that § 45298 does not limit reemployment to a job within a particular classification. In order to exercise his right for reemployment, Plaintiff must apply for an available position and satisfy the qualifications promulgated by the District for that position.

Holding: Affirmed. Plaintiff has preferential reemployment rights over any new applicants to available positions for which he applies, and for which he is qualified.

**LAPLANTE SPINELLI
DONALD & NOTT**
a professional corp.

815 S Street, Second Floor
Sacramento, CA 95811
916.448.7888
www.lsdnlaw.com

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California Court of Appeal, Fourth Dist.
Case No. D05266, November 20, 2008

The ADA Amendments Act of 2008

Effective January 1, 2009

ADA AMENDMENTS ACT OF 2008

The ADA Amendments Act of 2008 will become effective January 1, 2009. The Act has expanded protections of disabled workers under Federal law, bringing Federal disability laws in sync with already broad protections California offers disabled employees under the Fair Employment and Housing Act (FEHA.)

In the Amendments Congress expressed its intent to specifically overrule the U.S. Supreme Court's holdings over the years with regard to the definition of "disabled." Now, the term "disability" is to be interpreted broadly. And, according to the Amendments, the question of whether an individual's impairment is a disability should not demand extensive analysis.

The following are some specific areas addressed by the Amendments:

An Impairment That Substantially Limits A Major Life Activity.

In order for an impairment to be considered a disability, it need not limit more than one major life activity.

The list of major life activities covered under the ADA has been expanded to include many previously recognized activities and to include a list of Major Bodily Functions not specified before such as digestive, neurological, respiratory,

brain, reproductive and circulatory functions.

The Amendments also specify that an individual with an impairment which is episodic or in remission, will be considered disabled if that impairment substantially limits a major life activity when it is active.

Mitigating Measures

Congress specifically rejected the Supreme Court's prior holding in *Sutton v. United Airlines*, and its companion cases, that required a court to consider whether mitigating measures such as medication, should be considered in determining whether an individual is disabled under the ADA. Now, the determination of whether an impairment substantially limits a major life activity shall be made *without regard to the ameliorative effects of mitigating measures*, other than "ordinary eyeglasses or contact lenses."

Regarded as Having an Impairment

One area where Congress actually limited the ADA's coverage is with respect to individuals who are regarded as disabled.

Now, it is clear that an employer need not provide a reasonable accommodation to an individual who is not actually impaired, but is merely *regarded as* having an impairment that affects a major life activity.

Such an individual may still have a discrimination claim against his employer on another ground, but he or she is not entitled to an accommodation for a non-existent disability.

Further, the definition of a disability, which includes a person regarded as having an impairment that substantially limits a major life activity, will not extend to a "transitory impairment" with an actual or expected duration of 6 months or less.

How do the Amendments Affect the California Employer?

As a practical matter, for California employers, these Amendments mean little since California law has long offered extremely broad protections to the disabled in the employment arena. However, California courts will now be able to look to Federal law more readily for interpretive cases to guide their decisions in disability-discrimination cases.

And, the ADA Amendments Act should serve as a good reminder to review your policies with regard to hiring, firing and managing your employees so that your business handles all issues regarding disabled employees and applicants in compliance with these broad laws.