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California High Court Answers Many Questions Concerning the Reach of California's Employment Laws (But Leaves Some Questions Unanswered)

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Executive Summary

This week, the California Supreme Court issued two decisions, *Ward v. United Airlines, Inc.*, Case No. S248702, and *Oman v. Delta Air Lines, Inc.*, Case No. S248726, that will significantly impact interstate air carriers and other employers that have employees who regularly cross state lines. In the companion cases, California's High Court addressed a number of highly-anticipated questions regarding the application of California's employment laws to employees that regularly work both in and out of the state. Specifically at issue was the application of three of California's laws (minimum wage, wage statements, and frequency of payment) to pilots and/or flight attendants, who could cross into and/or out of California and any number of other states during any given workday.

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While some anticipated that the California Supreme Court would utilize *Ward* and *Oman* to establish broad, universally-applicable rules for when California's employment laws do and do not apply to interstate employees, the high court declined to make any such sweeping pronouncements. Instead, the Court held that the reach of any given California law can vary from one law to the next and "[t]here is no single, all-purpose answer to the question of when [California] law will apply to an interstate employment relationship or set of transactions."

While the Court side-stepped an across-the-board rule, it provided specific and useful guidance on the application of California law to two specific laws that were at issue in the two cases. Specifically, the Court held that California's wage statement law (Labor Code § 226) and timing-of-pay law (Labor Code § 204) apply to any employees who, in any particular pay period, either:

1. perform the majority of their work in California; or

2. do not perform the majority of their work in any single state, but perform some work in California **and** California serves as base for their work operations.

Despite providing helpful guidance on those two fairly rigid wage-and-hour requirements, the California Supreme Court did not address the extraterritorial application of California's minimum wage laws to interstate workers. Rather, the Court side-stepped that issue and, instead, found that Delta's pay practice, although complex, was lawful under California law.

While it remains to be seen under which circumstances the California Supreme Court will apply California's minimum wage laws, the state high court made clear that the application of California's employment laws will ultimately be analyzed on a section-by-section basis.

Main Content

On June 29, 2020, in two major wage-and-hour cases closely watched by the airline industry and other companies involved in interstate transportation, the California Supreme Court issued decisions that addressed, among other questions, the application of two of the state's employment laws to workers who regularly cross state borders in the course of their work: (a) Labor Code §226 (mandating content-specific wage statements); and (b) Labor Code § 204 (generally requiring weekly, biweekly, or semi-monthly pay).

Background

Both *Ward* and *Oman* stem from separate class actions litigated in federal court and currently pending before the 9th Circuit. As the cases address unresolved issues of California law, the 9th Circuit certified questions raised by the actions to the California Supreme Court.

Ward involved the consolidation of two class/representative actions brought by United Airlines pilots and flight attendants alleging non-compliance with the state's wage statement requirements (Labor Code § 226). *Oman* was a class/representative action brought by Delta Air Lines flight attendants who, relevant to the appeal, alleged violations of the state's wage statement requirements (Labor Code § 226), timing-of-pay requirements (California Labor Code § 204), and California's minimum wage laws.

The Ward Decision

In *Ward*, the state high court was tasked with answering two questions:

1. Are transportation industry employers whose workforces are covered by a collective bargaining agreement ("CBA") entered under the federal Railway Labor Act ("RLA") exempt from complying with the state's wage statement requirement?
2. If not exempt, under what circumstances does the wage statement requirement apply to employees residing in, receiving pay in, and paying taxes in California, but who do not work principally in California or any other state?

Answering the first question, after considering Labor Code § 226's verbiage and history and the underlying exemption at issue, the Court concluded that employees covered by an RLA CBA are **not**

exempt from the state's wage statement requirements. Put another way, the Court found that Labor Code § 226's wage statement requirements applied to employees even if they were covered by a CBA governed by the RLA.

The state high court next addressed the far more complex and delicate question of when the paystub requirement should apply for certain employees whose work in California is transitory in nature. After an overview of its past decisions concerning the extraterritorial reach of its laws, the state high court ultimately held that the state's wage statement requirement applied to employees who either:

1. perform the majority of their work in California; or
2. do not perform the majority of their work in any single state, but perform some work in California **and** California serves as base for their work operations.

In reaching this conclusion, the California Supreme Court created a test that, overall, asked whether the employees' principal place of work is in California – either because they worked principally in the state, or because the state serves as their "home-base," *i.e*. where the employees present themselves for work (or in airline parlance the crewmembers' "domicile" or "base").

The Oman Decision

In *Oman*, the state high court addressed three questions, the first of which overlapped with the extraterritorial application question presented in *Ward*:

1. Do the state's wage statement and timing of pay requirements apply to wage payments and wage statements provided by an out-of-state employer to an employee who, in the relevant pay period, works in California only episodically and for less than a day at a time?
2. Does California minimum wage law apply to all work performed in California for an out-of-state employer by an employee who works in California only episodically and for less than a day at a time?
3. Do California minimum wage standards, which prohibit employers from averaging an employee's overall compensation in order to meet the state's minimum wage requirements, prohibit a pay formula that generally awards credit for all hours on duty, but which, in certain situations resulting in higher pay, does not award credit for all hours on duty?

For the first question, the high court reiterated its holding in *Ward* that California's wage statement requirements applied only when employees, in particular pay periods:

1. perform the majority of their work in California; or
2. do not perform the majority of their work in any single state, but perform some work in California **and** California serves as base for their work operations.

The high court thereafter applied the same test to California's timing-of-pay requirements in Labor Code § 204.

In reaching this holding, the California Supreme Court specifically rejected an argument that an employer must parse out the "in California" hours for transient employees and issue a California-compliant wage

statement and California-timely pay for those hours. In short, California's wage statement and timing-of-pay requirements either apply in full to an employee for a pay period or they do not apply at all. If they apply, they apply for all hours. If they do not apply, they do not apply at all. While the Court did not require an employer to parse out hours within a pay period, it is important to note that the Court's holding may now require employers to analyze application of the above-referenced requirements on a pay-period-by–pay-period basis.

Despite reaching an answer on the first question, the Court side-stepped the second question, which addressed the application of California's minimum wage law to transitory employees. Instead, the Court held that, even assuming California law applied, the pay formula in question complied with the state's minimum wage laws. The practice that was challenged was a complicated procedure, where Delta performed four different calculations of an employee's pay, and the employee was paid the highest of the four. While the Court found the so-called "no borrowing" principle to be largely valid, it found that it did not apply to the specific facts of the case and held that the pay arrangement did not violate California minimum wage laws. As the Court succinctly put it: "Delta's arrangement may be relatively unusual, but it is not unlawful."

Takeaway

Going forward, interstate carriers doing business in California and other employers with interstate workforces should reevaluate their pay practices in light of these two cases to ensure compliance with the state's wage statement and timing-of-pay laws. Importantly, the high court explicitly limited its decisions to the above-referenced two legal requirements, leaving undecided how broadly the California Supreme Court may extend other California employment laws. Due to the Court's piecemeal approach, it is anticipated that *Ward* and *Oman* will ultimately be just two in a string of cases addressing the extraterritorial application of California's employment laws.

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