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California Supreme Court Establishes 'Relevant Connections' Test to Govern Applicability of Paycheck Disclosure Law to Air Crew Claims

Transportation Legal Update

In a decision likely to have implications for transportation companies beyond the narrow issue decided, the California Supreme Court has ruled that California's paycheck disclosure statute applies to persons who "present themselves" for work in California, even if the bulk of their working time is spent out-of-state. This decision provided clarity to federal courts attempting to resolve California state wage and hour claims by pilots and flight attendants.

California, a major air market and home base for domestic and international flight crews, has been at the center of carrier-aircrew wage and hour disputes. California law allows private actions to pursue statutory penalties that most states reserve to government regulators. Due to that, California based pilots and flight attendants have pursued claims to enforce California's requirement that paychecks provide detailed accounting of pay rates and time worked. *See* Cal. Labor Code. § 226. Other suits have raised minimum wage and mandatory break period claims, arising out of the incompatibility between California wage and hour law and the "block time" compensation system used by many air carriers.

The carriers argue California's laws do not apply for three reasons. First, they assert that under a "situs" test, aircrews who fly out of state are not "principally" employed in California. Accordingly, the rule against extraterritorial application of state laws excluded these employees from California's regulation. Second, they argue that applying California law to aircrews would violate the "dormant commerce clause" by creating burdensome patchworks of regulations across the country. Third, the carriers assert the Federal Aviation Act and Airline Deregulation Act preempt state regulation of aircrews.

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The carriers had early success with these arguments in *Ward v. United Air Lines*, where the Northern District of California held that California's paycheck disclosure law did not apply to pilots who resided in California but spent only 12 percent of their duty time in the state. Case No. CV15-02309 WHA, 2016 WL 3906077 (N.D. Cal. July 19, 2016). Soon thereafter, another Northern District court held that a multifactor test controlled the application of California law to an airline headquartered in California and that federal law did not bar California law from regulating these employees. *Bernstein v. Virgin America Airlines Inc.*, 227 F. Supp. 3d 1049 (N.D. Cal. 2017). Subsequent mixed decisions have highlighted the lack of a clear standard for whether California law applies to these workers. *See Vidrio v. United Air Lines, Inc.*, Case No. CV15–7985 PSG (MRWx), 2017 WL 1034200 (N.D. Cal. March 15, 2017) (finding California law did not apply under *Ward* or *Bernstein*); *Oman v. Delta Air Lines, Inc.*, 230 F. Supp. 3d 986 (N.D. Cal. 2017) (same); *Booher v. JetBlue Airways, Corp*., Case No. 15-cv-01203-JSW, 2017 WL 6343470 (N.D. Cal. Dec. 12, 2017) (same); *Goldthorpe v. Cathay Pac. Airways Ltd.*, 279 F. Supp. 3d 1001 (N.D. Cal. 2018) (denying motion to dismiss paycheck disclosure claims by international pilots residing in California and holding that California intended for its law to apply to transportation workers traveling elsewhere as part of their jobs).

In the face of numerous appeals, the Ninth Circuit certified the following question to the California Supreme Court:

Does California Labor Code § 226 apply to wage statements provided by an out-of-state employer to an employee who resides in California, receives pay in California, and pays California income tax on her wages, but who does not work principally in California or any other state?

The California Supreme Court answered that question in *Ward v. United Airlines*, 9 Cal. 5th 732, 466 P.3d 309 (2020). The court observed that two mirror-image presumptions dominated the debate. On the one hand, California's law was presumed not to apply extraterritorially absent evidence of contrary intent. On the other, California law was presumed to apply to work performed within the state. The court concluded that:

[F]raming the issue solely as whether the crew members' section 226 claims violate the presumption against extraterritoriality is not a particularly helpful way to approach the issue in this case. In our modern, interconnected economy, many legal transactions and relationships span multiple jurisdictions. That goes double for the claims of the employees here, whose very livelihoods consist of moving back and forth across state and international borders. From any given state's perspective, these employees' claims may well have both extraterritorial and intraterritorial

elements. Unless we are prepared to conclude that any extraterritorial effect at all is sufficient to bar application of California law, or, conversely, that any intraterritorial effect at all is sufficient to justify it, we cannot resolve this case based on territorial presumptions alone.

"The better question," the court said, "is what kinds of California connections will suffice to trigger the relevant provisions of California law."

The court held that "[a]pplication of section 226 logically depends on whether the employee's principal place of work is in California." But it observed that for transportation workers who do not physically work a majority of time in any state, the analysis could not end with physical location. Otherwise, "many transportation-sector employees * * * would not be entitled to the protections of *any* state's law." Accordingly, the court concluded the California legislature would have intended California law to apply "within reason" to workers who performed at least some work in California.

The court held that the proper test to apply was a "significant relationship" test. This looked first to whether an employee performed the majority of her work in California. If she did not, it examined whether "California serves as the physical location where the worker presents * * * herself to begin work." If so, California law (at least, section 226) applies. In adopting this test, the court expressly rejected three additional factors the *Bernstein* court had included in its analysis: where the employee resides, pays taxes, and receives wage payments. The court held that these were "entirely derivative of the underlying fact of residence" and rejected residence as a rule of decision.

The court was careful to note that "the connections that suffice for purposes of one statute may not necessarily suffice for another. There is no single, all-purpose answer to the question of when state law will apply to an interstate employment relationship or set of transactions. As is true of statutory interpretation generally, each law must be considered on its own terms." In doing so, the court left the door open for courts to make determinations of legislative intent and application particularized to each California statute, rather than a one-size-fits-all approach.

The *Ward* decision is one of California law, but may indicate how other state courts will approach applying state law to the unusual situation presented by aircrews. Meanwhile, the carriers' dormant commerce clause and statutory preemption arguments will now be before the Ninth Circuit. That court is likely to look hard at the decision in *Hirst v. SkyWest*, where the Seventh Circuit rejected a dormant commerce clause challenge to the application of Illinois minimum wage law to flight attendants, with

the Supreme Court subsequently denying certiorari. 910 F.3d 961 (7th Cir. 2018), *cert. denied* 139 S. Ct. 2745 (2019). Even if the Ninth Circuit sides with carriers, the result will be a circuit split likely to receive attention from the Supreme Court, with uncertain results. In the meantime, litigation between carriers and aircrews over state and local wage and hour issues appears likely to remain an active and developing area.