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CHARTING THE JURISDICTIONAL LANDSCAPE OF CALIFORNIA LABOR AND EMPLOYMENT LAWS FOR REMOTE WORKERS

The rise of remote work, accelerated by the COVID-19 pandemic, has transformed the American workplace. Following the pandemic, nearly two-thirds of employees now believe that remote work is the most important attribute of a job and by 2025, an estimated 36.2 million Americans will be working remotely. (https://www.uscareerinstitute.edu/blog/ 50-eye-opening-remote-work-statistics-for-2024) The intended geographic reach of California's labor and employment laws is therefore paramount.

Constitutional mapping: State sovereignty, extraterritoriality, and the Commerce Clause

In navigating the legal challenges of remote work, state sovereignty and the Commerce Clause guide the applicability of California law.

State sovereignty, a hallmark of American federalism, emphasizes the division of power between the national government and individual states. "The states between each other are sovereign and independent. They are distinct and separate sovereignties, except so far as they have parted with some of the attributes of sovereignty by the Constitution." (*Bank of Augusta v. Earle* (1839) 38 U.S. 519, 525.) This sovereignty allows states to govern their *own* internal affairs, create and enforce their *own* laws, manage local issues, and maintain their unique identities while being part of the larger Union. (*Shaffer v. Heitner* (1977) 433 U.S. 186, 197.)

Consistent with the principal of state sovereignty, California statutes are presumed to operate exclusively within the state, unless an extraterritorial intent is unequivocally articulated or can be reasonably inferred from a statute's language, purpose, subject matter, or historical context. (See *North Alaska Salmon Co. v. Pillsbury* (1916) 174 Cal. 1, 4.) This is known as the presumption against extraterritoriality. (*Ibid.*) Similarly, under presumption in favor of intraterritorial application, the Legislature is presumed to act with domestic concerns in mind and make efforts to avoid unintended conflicts with other states. (*Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, 750.) These two presumptions uphold state sovereignty and reinforce the cooperative nature of federalism.

State sovereignty is tempered by the Commerce Clause, which restricts states from regulating commerce that occurs entirely outside their borders, even if it affects in-state commerce. (*Edgar v. MITE Corp.* (1982) 457 U.S. 624, 642.) "A statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature." (*Healy v. Beer Institute, Inc.* (1989) 491 U.S. 324, 336.) The Commerce Clause is intended as a limitation on state power. (*Great Atlantic & Pac. Tea Co., Inc. v. Cottrell* (1976) 424 U.S. 366, 371.) Indeed, how chaotic would it be if states could impose their laws onto others and undermine local governance? Certainly, there is value in ensuring each state can manage its own affairs.

State sovereignty and the Commerce Clause engender a complex legal landscape for determining the applicability of state laws to remote workers across state lines. Compensating nonresidents who work exclusively outside California necessarily implicates commerce outside the state's borders and regulating it raises serious constitutional concerns. (*Cotter v. Lyft, Inc.* (2014) 60 F.Supp.3d 1059, 1063.) Considering the multiple constitutional layers involved, it is no wonder that there is no definitive rule defining the territorial boundaries of California's labor and employment laws. However, one thing is clear, the applicability of California's labor and employment laws to remote work is intricately tied to the state's connection with the work performed. (*Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732.) The stronger the connection, the more likely California labor and employment laws will apply.

Finding the nexus between California and remote work

"When it comes to the regulation of interstate employment, it is not sufficient to ask whether the relevant law was intended to operate extraterritorially or instead only intraterritorially, because many employment relationships and transactions will have elements of both; the better question is what kinds of state connections will suffice to trigger the relevant provisions of state law." (*Ward, supra*, 9 Cal.5th at p. 752.) Under *Ward*, California law applies to remote work only where California's connection to the work performed is more significant than that of any other state such that it would be consistent with state sovereignty and the Commerce Clause to apply California law. (*Id.* at p. 732.)

The rule of thumb is that California law does not apply to individuals who have never or who, at best, irregularly set foot in California in furtherance of their work. (See e.g., *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732; *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th 762; *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1194; *Cotter v. Lyft, Inc.* (2014) 60 F. Supp.3d 1059.)

In *Oman v. Delta Air Lines, Inc.*, for example, our high court concluded that California's wage statement laws do not apply to flight attendants who work primarily outside California's territorial jurisdiction. (*Id.*, 9 Cal.5th at p. 770.) One of the plaintiffs in *Oman* lived in New York and had a New York airport as a home base. The issue was whether California Labor Code sections 224 (withholding from employee's wages) and 226 (recording of wage deductions) applied to the New York plaintiff who worked in California only episodically and for less than a day at a time. Emphasizing the fact that the plaintiff neither performed his work predominantly in California nor was he based for work purposes in the state, the court held

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that these wage statutes did not have extraterritorial application.

The California Supreme Court admittedly leaves open the possibility that California laws might apply in limited cases where an employee temporarily works out of state but returns to California by the end of the day. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 578.) Absent special circumstances, however, "there is no hint that the wage and hour laws could apply to people who work exclusively in other states." (*Cotter v. Lyft, Inc.* (2014) 60 F.Supp.3d 1059, 1062.)

California labor laws are intended to protect individuals who perform work within California. (*Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1207; *Tidewater Marine Western, Inc. v. Bradshaw* (1986) 14 Cal.4th 557; *Senne v. Kansas City Royals Baseball Corp.* (2019) 934 F.3d 918, 932.) As such, to trigger the application of California law to remote employees, it is imperative to establish a nexus between California and the work performed. The stronger the connection, the stronger the possibility of triggering California law.

The impact of choice-of-law provisions in an employment contract

Whether a choice-of-law provision in an employment contract will decide the applicable law hinges on whether the claims are statutory in nature or inextricably linked to the construction and enforcement of the employment contract. (Compare *Cotter v. Lyft, Inc.* (2014) 60 F.Supp.3d 1059 with *Olinick v. BMG Entertainment* (2006) 138 Cal.App.4th 1286.)

In *Cotter v. Lyft*, Lyft drivers argued that they were misclassified under California law and were thereby being deprived of California's minimum wage. (*Id*. at pp. 1060-1061.) Their claims were statutory in nature as they were rooted in California's Labor Code. (*Id*. at pp. 1062-1063.) That Code specifically set a geographic limitation, because it states, in relevant part, that "to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed *in this state*, and to investigate the health, safety, and welfare of those employees." (*Id*. at 1063.; citing Lab. Code, § 1173.) "When a law contains geographical limitations on its application, courts will not apply it to parties falling outside those limitations, even if the parties stipulate that the law should apply. (*Cotter*, 60 F.Supp.3d at p. 1065; *Gravquick A/S v. Trimble Navigation Int'l Ltd.* (2003) 323 F.3d 1219, 1223.)

In contrast, the court in *Olinick v. BMG Entertainment* ruled that the choice-of-law provision requiring New York law to apply covered the plaintiff's age-discrimination claims because the discrimination was tied to how the employer enforced the contract. (*Id*., 138 Cal.App.4th at p. 1300.) Recognizing that FEHA claims are statutory claims, the court nevertheless upheld the party's choice-of-law provision because the interpretation of the employment agreement was central to the plaintiff's discrimination claim as the employer would likely defend against such allegation by asserting its contractual right to terminate the plaintiff without cause if certain compensation was provided.

Hence, the critical distinction when considering the impact of choice-of-law provisions lies in whether the claims are statutory and exist independent of the agreement, as in *Cotter,* or contractual as in *Olinick*.

The location of decisionmakers

In *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, the Supreme Court considered and rejected an argument that California law should govern the employer-employee relationship merely because the company was based in California and because decisions about the workers' employment status were made in California. Rather than focusing on the location of the company or its decisionmakers, the Court focused on the location of the work. The California Supreme Court has reaffirmed that an employer's domicile has no bearing in the application of California state law to remote employees. (*Oman v. Delta Air Lines, Inc.*, *supra*, 9 Cal.5th at p. 773.) "To hold otherwise would, as Delta suggests, create an incentive for businesses employing individuals who work in California to avoid application of California law by locating their business operations outside the state. (*Ibid*.) The opposite conclusion would raise serious constitutional concerns as the Commerce Clause precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State. (*Cotter*, *supra*, 60 F. Supp.3d at pp. 1063-1064.)

Charting the path forward: Navigating the jurisdictional complexities of remote work

In conclusion, the evolving landscape of remote work poses significant challenges for the application of California labor and employment laws. As remote work becomes increasingly prevalent, the intersection of state sovereignty, the Commerce Clause, and the presumption against extraterritoriality plays a crucial role in determining the reach of these laws. The applicability of California labor laws hinges on the strength of the connection between the state and the work performed, with a clear focus on the location of the work rather than the domicile of the employer or the location of decision-makers. The complexities of this jurisdictional landscape underscore the importance of carefully navigating the legal framework to ensure that California's labor protections are appropriately applied without overstepping constitutional boundaries. As remote work continues to reshape the American workforce, the ongoing refinement of these legal principles will be essential in charting the future of labor and employment law in California and beyond.

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