Clarifying the Presumption Against Extraterritoriality: California Northern District Court Rejects the Application of Federal and California State Wage and Hours Laws to Work Performed Overseas

In a decision issued on May 3, Judge Edward M. Chen of the U.S. District Court for the Northern District of California dismissed – with prejudice – the bulk of federal and California state wage and hour allegations made against Ropes & Gray client Adventures Rolling Cross-Country (ARCC), a California-based travel camp operator that provides international educational and adventure camp experiences for youths. *See Wright v. Adventures Rolling Cross Country, Inc.* No. C-12-0982 EMC (N.D. Cal.).

Plaintiffs are former ARCC "Trip Leaders" who argued that they were "on-call 24 hours a day" while leading teen campers on trips to perform public service and outdoor activities in Costa Rica, Belize, Italy and Greece. Plaintiffs sought minimum wage and overtime compensation, among other things, for their service. In granting ARCC's motion to dismiss, Judge Chen agreed that the federal Fair Labor Standards Act (FLSA) exempts from coverage any work performed in a foreign workplace. Similarly, the Court confirmed that California Labor Code provisions relating to minimum wage and overtime compensation are inapplicable to work carried out overseas.

Judge Chen's thorough examination of the issue of extraterritorial application of California labor laws could well have an impact on future wage and hour cases. In particular, Judge Chen outlined several reasons why the California Labor Code's wage and hour provisions have no extraterritorial application.

- First, the California Supreme Court has referred to the presumption against extraterritorial application for nearly a century, and the California legislature has yet to specify that there should be extraterritorial application for the wage and hour laws.
- Second, while the California legislature expressly provides for extraterritorial application in other provisions of the Labor Code, "the fact that the provisions at issue do not include any statement about extraterritorial application is doubly telling."
- Finally, there is "no competing presumption that would nullify the presumption against extraterritoriality." While there is a presumption that a wage earner in California enjoys the protections of the Industrial Welfare Commission regulations, the wage earner is presumably an employee who "resides in California, receives pay in California, and works exclusively, or principally, in California." (Cal. Lab. Code §§ 3600.5, 5305).

Given the presumption against extraterritorial application, Judge Chen concluded that "the situs of the work" rather than the residency of the employee, or where the wages are paid, is "the most important factor" in an extraterritoriality analysis.

Left open for future decision in the case is the question of whether the FLSA and California "organized camp" exemptions cancel out the remaining wage and hour claims relating to time worked as part of pre-trip training, which was held in California at ARCC's fixed site in Marin County.

Please contact any Ropes & Gray attorney with whom you regularly work if you have any questions or would like to discuss this development.