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Atty Groups Back Workers In Calif. Delta Minimum Wage Row

By **Linda Chiem**

Law360 (February 27, 2019, 8:12 PM EST) -- Plaintiffs and public interest attorneys urged the California Supreme Court to affirm that the state's minimum wage law and labor codes apply to pilots and flight attendants even if they mostly work out of state, saying all employees should benefit from general wage and hour protections.

The California Employment Lawyers Association, Legal Aid At Work, California Rural Legal Assistance Foundation, National Employment Law Project and Women's Employment Rights Clinic filed an amicus brief on Wednesday with the California Supreme Court in a case alleging Delta Air Lines isn't properly compensating flight attendants on an hourly basis for all their work.

The case is part of a trio of suits — the other two suits name United Airlines — seeking clarification from the state's justices on how California's minimum wage law and labor codes apply to certain situations involving pilots and flight attendants mostly working out of state.

"An employee enjoys the protections of those California statutes and regulations when working in California, irrespective of whether she spends other parts of her day in the air, on the sea, or in Oregon, Nevada, Arizona or Mexico," the legal organizations said in their brief in the *Oman v. Delta* case. "To hold otherwise, particularly when applying fundamental protections such as those at issue, would create a perverse incentive for employers to force multi-state assignments on workers to avoid minimum wage liability and timely payment and wage statement requirements."

The dispute is before the California Supreme Court after the justices in July **agreed** to take up certified questions it **received** from the Ninth Circuit in three suits. Two suits were launched by plaintiffs Charles Ward and Felicia Vidrio alleging United Airlines violated California Labor Code Section 226 by issuing non-compliant wage statements to flight attendants and pilots.

And one suit was from plaintiffs Dev Anand Oman, Todd Eichmann, Michael Lehr and Albert Flores alleging Delta wasn't properly compensating flight attendants on an hourly basis for all their work.

By taking up the questions, the California high court will clarify just how far-reaching the Golden State's wage laws really are in a trio of closely watched cases that have the **airline industry on edge** that it may face additional administrative burdens of complying with a patchwork of state wage-statement statutes, industry observers have told Law360.

United is based in Chicago, while Delta's headquarters is in Atlanta. They've argued that they shouldn't be made to provide itemized breakdowns for pay and deductions in employee wage statements for all work done — no matter if it's just for a brief period of time or if the work is minor in scope — while crossing into California, given the companies' tenuous connections to the Golden State, according to court documents.

Delta, in particular, has argued that the California Supreme Court laid out a so-called "job situs test" in its *Tidewater Marine Western Inc. v. Bradshaw* decision for determining that the state's wage-and-hour laws do not apply to those who do not work, exclusively or principally, in California.

"The adoption of plaintiffs' proposed 'any work done in California' standard — in place of the job situs test — would create a morass of legal entitlements for innumerable people who, while traveling through California, briefly 'work,'" the airline has argued in court documents. "But nothing suggests California intended to apply its wage-and-hour laws to out-of-state workers who work briefly in California while on layover or vacation."

Delta has said the well-established job situs test provides a simple and workable standard that is clear to both employers and employees — namely, employment can be subject to California wage-and-hour requirements only if work is performed, exclusively or principally, in California.

The legal organizations that weighed in on Wednesday have argued that Delta's "job situs test" has no precedent in California law and the airline completely mischaracterized the holding in *Tidewater*.

"Defendant employer invents a 'situs' test that does not appear anywhere in *Tidewater* and ignores the court's own limitation on the scope of the decision, which could not be more clear," they said.

In fact, the *Tidewater* court said "we express no opinion as to whether the trial court can enjoin the application of [California Industrial Welfare Commission] wage orders to crew members who work primarily outside California's state law boundaries because the court of appeal did not address that question."

An attorney for the plaintiffs in the Delta case declined to comment on Wednesday. Representatives for Delta were not immediately available for comment.

The plaintiffs in the case against Delta are represented by Matthew C. Helland and Daniel S. Brome of Nichols Kaster PLLP and Michael Rubin and Barbara J. Chisholm of Altshuler Berzon LLP.

Delta is represented by Robert Jon Hendricks, Thomas M. Peterson and Andrew P. Frederick of Morgan Lewis & Bockius LLP.

The amici curiae legal organizations are represented Carole Vigne and Katherine Fiester of Legal Aid at Work, Cynthia L. Rice of California Rural Legal Assistance Foundation and Monique Olivier of Olivier Schreiber Chao LLP.

The plaintiffs in the cases against United are represented by Stuart B. Esner of Esner Chang & Boyer and by attorney Kirk D. Hanson.

United is represented by Adam Paul KohSweeney, Robert Siegel and Susannah K. Howard of O'Melveny & Myers LLP.

The instant cases are Ward v. United Airlines Inc., case number S248702, and Oman v. Delta Air Lines Inc., case number S248726, in the California Supreme Court.

The Ninth Circuit cases are Vidrio et al. v. United Airlines Inc. et al., case number 17-55471, Ward v. United Airlines Inc., case number 16-16415, and Oman v. Delta Air Lines Inc., case number 17-15124, all in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Adam Lidgett. Editing by Michael Watanabe.

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