
CALIFORNIA EMPLOYERS BEWARE: DO YOUR EMPLOYEES HAVE CHAIRS? (WARNING REDUX)



Phillip L. Kossy

Partner

619.699.2433

pkossy@luce.com

www.luce.com/phillipkossy

In June 2009, we warned (and worried) that a new wave of class actions was being unleashed under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) seeking penalties for the failure of employers to provide seating to classes of employees under the provisions of the various state Wage Orders. (See “California Employees Beware: Do Your Employees Have Chairs?” - Luce Forward e-Update - June 19, 2009 - following this e-Update.) At the time, lawsuits had just been filed against large retailers Home Depot and Wal-Mart on the basis of Wage Order language stating, “*All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.*” Unfortunately for employers, we were accurate in our prediction.

Just this week lawsuits invoking this Wage Order provision were filed against Ralphs Grocery, Walgreens, and Trader Joe’s. These lawsuits followed published California Court of Appeal decisions in the last few weeks, including in the Home Depot case, declaring that PAGA penalties could indeed be applied to alleged failures of employers to supply seating purportedly required by the Wage Orders. Undoubtedly, these appellate decisions have also spawned other lawsuits across the state against other employers, large and small.

For most employers subject to this Wage Order language who are not providing required seating to affected employees, it’s probably not too late to take action in an effort to avoid or minimize further liability. We again recommend analysis of the Wage Order and the application of it to jobs where seating would appear to be required.

For more information or for advice on this issue, please contact Phillip Kossy or any other member of Luce Forward’s Labor & Employment Group.

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Has a New Wave of Class Actions Been Unleashed?

Among the many provisions of the Wage Orders applicable to California employees is this provision: *"All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."* This week, three well-known employee-side wage and hour class action law firms filed a single count class action in the California Superior Court in Los Angeles against Home Depot alleging that the company failed to provide seats to its cashiers in violation of this requirement. Last week, they filed the same action against Wal-Mart in Alameda County. Both actions seek penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA," also referred to as the "Sue Your Boss Law") which provides in this circumstance for penalties of up to \$200 per employee for each pay period, for up to one year prior to the filing of the lawsuit, as well as attorneys' fees. A violation for a single employee for 1 year, with 26 pay periods per year, could result in penalties of more than \$5,000. Double it for weekly pay periods. Multiply the annual penalty by the number of employees in the class and the numbers add up fast.

Are these lawsuits the start of a new class action front against California employers? It's unclear, but it certainly suggests that employers take a careful look at the possible application of this Wage Order mandate to its workforce. Among the jobs to which it might apply are cashiers, bank tellers, lab techs, assembly workers, and counter and other customer service jobs. It also suggests that careful attention be given to the many other requirements in applicable Wage Orders and in the Labor Code, each of which might serve as the basis for a class action (e.g., workplace temperature, uniforms, employee expenses, elevators, wage statements and records, split shift premium pay, changing rooms, rest break rooms). Has the "promise," or the curse, of PAGA (penalties and class actions for violations of the innumerable California regulations imposed on employers, many obscure) finally come home to roost? Have we now entered an era beyond just overtime and meal and rest period claims? Perhaps.

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