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Employers Liable for Leaving Employees Standing

January 5, 2011

Many California employers have unfortunately already faced a wage and hour claim (or worse yet a class action lawsuit) alleging misclassification of employees for overtime purposes and/or meal period and rest break violations.

Those claims continue to be filed in overwhelming numbers, and employers are well advised to (1) audit all job positions which that employer considers exempt from overtime, and (2) develop a strict meal period and rest break compliance program. A recent California court of appeal case entitled *Bright v. 99¢ Only Stores* has now further expanded the types of wage and hour claims with which employers will likely be confronted.

Employers in California should carefully analyze whether they are complying with the obligation to provide seats to their employees.

In the *99¢ Only Stores* case, the employee alleged that cashiers were not provided with chairs as required by Wage Order No. 7, subdivision 14, which states:

"(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

The main legal issue decided by the appellate court was whether the employee could sue for civil penalties under the Labor Code Private Attorneys General Act of 2004 for violation of the suitable seating provision of the Wage Order. The court held that the employee could sue for such penalties, which can amount to up to \$5,000-\$10,000 for each employee. On December 22, 2010, a second California Court of Appeal issued a similar ruling in a class action case involving Home Depot. (*Home Depot U.S.A., Inc. v. Superior Court.*)

Thus, employers in California should carefully analyze whether they are complying with the obligation to provide seats to their employees. Because the suitable seating requirement is contained in all of the various Wage Orders, that requirement is not limited to retail store employees. Thus, this issue could be especially applicable to jobs such as:

- cashiers

- bartenders
- security guards
- counter service personnel
- assembly line workers
- retail salespersons.

In addition, employers need to be diligent in complying with the various other Wage Order and Labor Code provisions regarding uniforms, business expenses, changing rooms, lockers, rest break facilities, food preparation areas, payroll records, and workplace temperatures.

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