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California Court of Appeal Allows Lawsuit Against An Employer For Allegedly Failing To Provide An Employee With "Suitable" Seating

In the recently published *Bright v. 99¢ Only Stores*, the California Court of Appeal held that an employee could sue her employer, 99¢ Only Stores, for failure to provide "suitable" seating during her employment. Plaintiff Eugina Bright ("Bright") was employed as a cashier by 99¢ Only Stores. She alleged that she was not provided with a seat when she worked. Bright asserted that the failure to provide her with a seat violated the applicable Industrial Welfare Commission ("IWC") Wage Order, which requires that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Bright further asserted that the violation of the "suitable" seating provision of the Wage Order also constituted a violation of Labor Code Section 1198, which provides: "The maximum hours of work and the standard conditions of labor fixed by the [Industrial Welfare Commission] shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Bright sought penalties for the alleged violation of Labor Code Section 1198 under the Private Attorneys General Act of 2004 ("PAGA"), which provides a penalty for the violation of any section of the Labor Code for which a civil penalty is not otherwise provided. The Company argued that Bright had no viable claim because Labor Code Section 1198 only applies to those portions of the Wage Order that actually *prohibit* conduct (e.g. "an employer shall not…") and not to sections of the Wage Order that set conditions of employment in affirmative terms; that the Wage Order's "suitable" seating requirement was an affirmative requirement and not a prohibition; and that a failure to provide suitable seating therefore did not violate Labor Code Section 1198.

The Court of Appeal rejected the Company's arguments, holding that Labor Code Section 1198 applied the Wage Order's requirements regardless of whether they were stated in prohibitory language. The Court of Appeal found that a failure to provide "suitable" seating could constitute a violation of both the Wage Order and Labor Code Section 1198, and held that Plaintiff could seek penalties under PAGA.

It is important to note that *Bright* only addressed the legal ability of an employee to seek PAGA penalties for an employer's failure to provide "suitable" seating. *Bright* did not decide whether the Company provided "suitable" seating or violated any law. Additionally, *Bright* did not address what constitutes "suitable" seating, what standard should be applied to determine what is "suitable," or what type of work would not reasonably permit the use of seats.

In light of *Bright,* employers are encouraged to review their seating policies to ensure they provide employees with suitable seating in appropriate circumstances, and should consult counsel with any questions. Moreover, *Bright* serves as a reminder that it is generally advisable for employers to review all of their policies with counsel to ensure that they comply with all aspects of the law.