

**CALIFORNIA EMPLOYERS BEWARE**

**> A new wave of litigation is coming**

by Cathy Arias

**California may be the home of sun, surf, redwoods, and recovering Hollywood starlets, but it also has the well-deserved reputation as the country's most employee friendly state.**



Cathy Arias

California labor laws are considered by many to be a minefield for employers. On a regular basis you hear of California companies that choose to relocate citing the difficulty of navigating California laws. Unfortunately, a new California appellate decision just made it even more arduous and potentially expensive for California employers who choose to stay.

The lawsuit was brought by a cashier, Eugina Bright, employed at a 99¢ Only Store in Los Angeles. She filed a class action suit against her employer for failing to provide her and other cashiers with a seat. In her lawsuit, she sought civil penalties under the Labor Code's Private Attorneys General Act (PAGA) for the seat violation. The requirement to provide employees with a seat, if the nature of the work reasonably permits, is found in the state's Industrial Welfare Commission Wage Orders.

The trial court initially dismissed the lawsuit finding that Bright and her fellow cashiers could not recover penalties under the PAGA because she was suing only

for a violation of the Wage Order. The Appellate Court disagreed, finding that Wage Order violations alone are sufficient. The Court reinstated the class action lawsuit allowing Bright to seek monetary compensation for her company's non-compliance with the Wage Orders.

Those unfamiliar with the minefield that is California employment law may react to this decision with a yawn or a "who cares." The informed, however, understand that this case could signal a whole new wave of employment litigation in California.

Why? In California, in addition to complying with the State Labor Code, there are 17 Wage Orders which are specific to the industry or occupation it covers. Within each Wage Order, you can find regulations on topics as diverse as:

Hours and days of work; minimum wages; overtime; alternative work weeks; reporting time pay; special licenses for disabled workers; record retention; cash shortage and breakage; uniforms and equipment; meals and lodging; meal periods; rest periods; change rooms and resting facilities; seats, temperature; and elevators.

Many employers in California were not even aware of the requirements of the Administrative Wage Orders, and for those that were aware, it was generally assumed that violations could only be enforced through government prosecution. Now, unless the California Supreme Court revisits the issue, employees and their attorneys are free to find violations of these obscure regulations and sue for penalties not only on their own behalf, but on behalf of

their co-workers.

Under PAGA, employees may sue for civil penalties of up to \$200 for each pay period that a violation occurs. In a class action brought on behalf of an entire workforce, it is easy to see how these penalties can add up quickly. As an example, by failing to acquiesce to their cashier's request for a chair, 99¢ Only Stores could owe more than \$1 million for just one year of violations. Of course, this does not even count the attorney's fees that would also be recoverable in most instances.

In light of this floodgate opening decision, employers would be wise to take the following steps to diminish their risk at being targeted for such a claim:

- (1) Determine which Wage Order applies to their business and familiarize themselves with all of the Wage Order working condition requirements.
- (2) Post the Wage Order that applies in a break room or other place where your employees are notified of important items. Failure to do so is itself a violation of the Wage Orders.
- (3) Conduct an audit to make sure business operations are consistent with the Wage Orders.
- (4) Retain an experienced employment attorney to assist the business in navigating California's labor laws, including the Wage Orders. It will be an investment that will pay off in the long run. ■

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