



# EMPLOYMENT LAW UPDATE

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## SCOPE OF CALIFORNIA PRIVATE ATTORNEY GENERAL ACT (PAGA) EXPANDED

### EXPECT INCREASE IN CLASS ACTION LAWSUITS

In a recent case the California Court of Appeal expanded the reach of the Private Attorney General Act of 2004 (PAGA) when it held that an individual employee can act as a “private attorney general” to recover penalties for violations of working conditions standards set forth in the California Wage Orders.

A cashier at a 99¢ Only Store brought a class action law suit against her employer alleging that it did not provide its cashiers with seats, even though cashier work reasonably permitted the use of seats. The plaintiff relied on subdivision 14 of Wage Order 7 that governs the mercantile industry and states:



“All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” The argument was that the employer’s failure to provide seats violated Labor Code section 1198, which provides that the Industrial Welfare Commission (IWC) fixes the standard conditions of labor for employees, and that subjecting employees to conditions prohibited by the IWC is unlawful.

Under PAGA a plaintiff is allowed to file his or her own lawsuit for violations of the Labor Code that could have been brought only by the Labor Commissioner prior to 2004. PAGA may be used only for sections of the Labor Code in which a civil penalty is not specifically provided. A successful plaintiff in a PAGA lawsuit can recover \$100 per aggrieved employee per pay period for the initial violation, and then \$200 per employee per pay period for each subsequent violation, with 75% of the recovery going to the Labor and Workforce Development Agency. It is easy to see how these penalties can and do add up even for a small workforce.

At the trial court the court granted the employer’s motion to dismiss noting that civil penalties are not available under PAGA because the Wage Order contains its own penalties.

On appeal the Court of Appeal first ruled that the suitable seating requirement is “a standard condition of labor fixed by the labor commissions,” and its violation is a violation of Labor Code section 1198. The Court of Appeal also found that, although Wage Order 7 does contain its own penalty provision, its plain language is limited to penalties for wage violations, not violations of working condition standards.

This case is not limited to the narrow issue of cashiers recovering penalties for not having been provided with seating. The clear implication is that the reasoning of the case would apply to other working conditions and other Wage Orders. Section 1198, and PAGA could be used by plaintiffs to en-



force working condition standards such as the temperature of working areas, rest areas, changing facilities and provisions for uniforms and equipment.

All California employers are urged to review the Wage Order applicable to their business and ensure that they are in compliance with the required working conditions.

**Ezra, Brutzkus, Gubner LLP** offers its clients advice and counsel in all areas of labor and employment law. **Richard L. Mann** has 30 years of experience representing employers around the nation in all aspects of labor and employment law including discrimination, wrongful termination and wage-hour disputes and traditional labor relations. Mr. Mann has represented employers in a variety of industries including apparel, hospitality, manufacturing, transportation, entertainment, packaging and various service industries.



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