

## Plaintiffs Pursue A New Line Of Class Actions Against Employers

Recently, a new type of class action claim has emerged against employers. Specifically, both Home Depot and Wal-Mart Stores were sued for failing to provide employees “with suitable seats when the nature of the work reasonably permits the use of seats.” Both lawsuits were brought under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), which allows individuals to recover civil penalties for an employer’s violation of various sections of the California Labor Code.

California employers are subject to different Industrial Welfare Commission Wage Orders depending on the specific nature of the business or work performed. Almost every Wage Order includes a provision requiring employers to provide seating to its employees “when the nature of the work reasonably permits the use of seats.” These Wage Orders further direct employers to provide seating for employees whose positions require standing within “reasonable proximity to the work area,” and employees must be permitted to use the seats “when it does not interfere with the performance of their duties.” Clever employee-side counsel are asserting that an employer’s failure to provide proper seating to its employees is a violation of the Wage Orders, which in turn violates Labor Code § 1198, which makes it unlawful to employ employees “under conditions of labor prohibited by the [Wage Orders].” Counsel then assert that this violation of Section 1198 gives rise to a PAGA claim.

While these “employee seating” provisions may seem trivial, if employees’ attorneys are successful in asserting these claims, the result can be very costly to employers. A successful PAGA action can result in an employer being liable to pay penalties of up to \$200 per employee per pay period for a year for the entire class of affected employees. Thus, an employer that pays its employees every two weeks could be liable for \$5,200 in damages for *each employee* for the preceding year if found liable under PAGA. For an employer with 100 employees, this equates to \$520,000 in penalties. Moreover, PAGA allows a successful plaintiff to recover attorneys’ fees and costs incurred in prosecuting the action.

These cases against Home Depot and Wal-Mart show that employee-side attorneys are searching for new ways to sue employers, regardless of how technical or inconsequential the alleged violations. Therefore, employers should ensure that they are complying with all mandates of the Labor Code and applicable Wage Orders. Many Wage Orders set forth somewhat obscure requirements regarding employee seating, the temperature of the work area, changing rooms, uniforms, and elevators, among other conditions of employment. Violations of any of these provisions can form the basis of a costly PAGA action.

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