

A Breath of Fresh Air

Rare Good News in Wage & Hour Law

Presented by

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ZB N.A. v. Superior Court (Lawson)



ZB N.A. v. Superior Court (Lawson)

- Resolves a split among California Courts of Appeal on the issue of application of an arbitration agreement to a PAGA claim seeking both civil penalties and unpaid wages (pursuant to Labor Code section 558)
- The Court held that the initial question that had to be answered was whether an employee suing exclusively under PAGA may seek to recover unpaid wages as part of the relief in the action
 - The Court held the answer to this question is “no”
- The Court emphasized that PAGA actions fundamentally are law enforcement actions brought on the state’s behalf and not for the benefit of private parties

ZB N.A. v. Superior Court (Lawson)

- Unpaid wages, by contrast, are a form of relief that is individualized and directly for the benefit of private parties (affected employees)
- The Court acknowledged that Labor Code section 558 expressly states that employers who violate certain wage and hour laws are subject to a civil penalty “in addition to an amount sufficient to recover unpaid wages”

ZB N.A. v. Superior Court (Lawson)

- However, the Court held that this provision authorizes only the Labor Commissioner to order such relief as part of its citation procedures
- Unpaid wages may not be sought by a private plaintiff suing solely under PAGA (the relief available in a PAGA action is limited to fixed civil penalties and does not include unpaid wages)

Townley v. BJ's Restaurants, Inc.



Townley v. BJ's Restaurants, Inc.

- A California court considered whether an employer must reimburse employees for the cost of slip-resistant shoes they were required to wear to work
- BJ's did not require a specific brand, style, or design of shoe, and employees were free to wear their shoes outside of work
 - BJ's did not pay for the cost of these shoes and did not reimburse employees for the expense of purchasing them
- BJ's was sued by a former server seeking penalties under PAGA on behalf of all aggrieved employees of BJ's in California

Townley v. BJ's Restaurants, Inc.

- The server alleged that the shoes were a required uniform item that BJ's was required to provide (or reimburse employees' expense for purchasing them)
- Rejecting the employee's claim and holding that BJ's was not required to pay for the cost of slip-resistant shoes, the court, relying on guidance from the Division of Labor Standards Enforcement and the Ninth Circuit in a similar case, held that this was not a reimbursable business expense because the slip-resistant shoes were non-distinct and generally usable by employees in any restaurant occupation
 - As such, they could not be considered a "uniform" that BJ's was required to provide or reimburse

Voris v. Lampert



Voris v. Lampert

- California Supreme Court held that employees claiming unpaid wages cannot sue their employers in tort for conversion
- There remain numerous Labor Code provisions that allow employees to sue for unpaid wages, penalties, interest, and attorneys' fees



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Ryan H. Nell is an employment attorney responsible for representing California employers statewide in both counseling and comprehensive litigation support. With the ever-changing landscape of California and federal employment law, Ryan prides himself on assisting clients in staying ahead of the curve in an effort to avoid legal trouble before it arises. He has extensive experience representing clients in harassment, retaliation, and discrimination matters, as well as large-scale wage and hour lawsuits.

Ryan speaks regularly on a wide range of topics aimed at assisting California employers in the avoidance of legal trouble before it arises, and his work in the field has led to his recognition as a Rising Star by *San Diego Super Lawyers*®.

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