

Ninth Circuit Addresses Whether California Employers Need to Reimburse Employees for Non-Slip Safety Shoes

Article By:

Kevin Sullivan

Michael S. Kun

Jeffrey H. Ruzal

On June 18, 2015, the ***Ninth Circuit*** issued an unpublished opinion in ***Lemus v. Denny's, Inc.*** The opinion provides guidance to *California* employers that require their employees to wear non-slip shoes as a condition of employment.

California law generally requires that an employer must reimburse employees for “necessary expenditures.” However, not all expenses are reimbursable.

In addressing Denny’s requirement that employees wear non-slip black shoes for which they are not reimbursed, the Court noted that, under California law, a “restaurant employer must only pay for its employees’ work clothing if the clothing is a ‘uniform’ or if the clothing qualifies as certain protective apparel regulated by CAL/OSHA or OSHA.” The plaintiff who sued Denny’s did not argue that the non-slip black shoes were part of a “uniform,” nor did he argue that such shoes were not “generally usable in the [restaurant] occupation.” As such, the Court held that California law does not require Denny’s to reimburse the cost of its employees’ slip-resistant footwear. Notably, the Court did not address whether such shoes qualified as reimbursable protective apparel because the plaintiff conceded that issue.

The Court also found in favor of Denny’s on the plaintiff’s challenge to the use of computerized authorizations for certain wage deductions. California requires that when wages are deducted from an employee’s paycheck (other than taxes, Social Security, etc.), the employee must expressly authorize such a deduction in writing. The plaintiff claimed that the cost of non-slip shoes was not properly deducted because employees did not sign a paper authorizing such deductions; but did so electronically. The Court rejected that argument.

Finally, the Court rejected the plaintiff’s argument that employees were coerced into buying non-slip shoes from a particular vendor. However, the plaintiffs did not present any evidence that employees were required to purchase from that vendor.

The Ninth Circuit's opinion provides guidance on the issue of whether employees must be reimbursed for non-slip shoes. In particular, unless the shoes were considered part of a uniform and were not usual and generally usable in the employer's industry, it would appear that reimbursement of such is not required under California law. Additionally, where an employee authorizes a deduction electronically using some form of personal identification, the opinion provides a California employer with some comfort that it has met its obligation so long as such a record is retained. Also, where there is no actual coercion for an employee to purchase something from the employer or a specified third party for employment, the opinion again provides employers with comfort that they have complied with the law.

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