

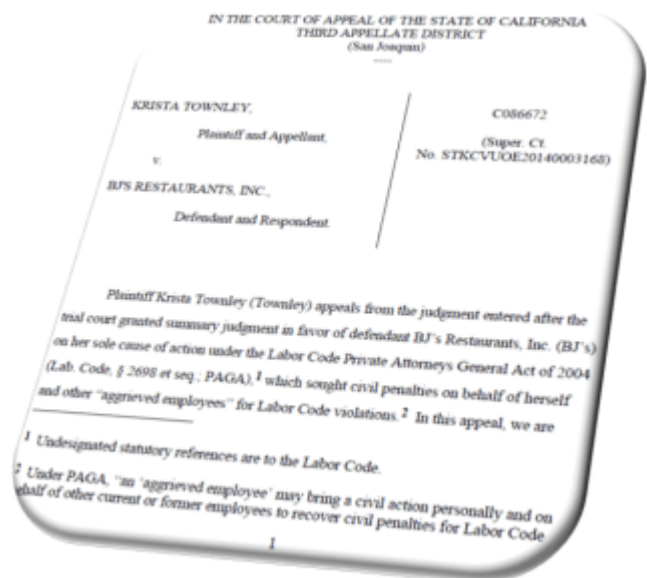
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Calif. Employers Are Not Required To Reimburse Restaurant Workers For the Cost of Slip-Resistant Shoes

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A recent California Court of Appeals decision in [Townley v. BJ's Restaurants, Inc.](#), has further defined the scope of reimbursable business expenses under California Labor Code section 2802, this time in the context of slip-resistant shoes for restaurant workers.

A former server filed an action under the California Labor Code Private Attorneys General Act of 2004 (PAGA), seeking civil penalties on behalf of herself and other "aggrieved employees" for California Labor Code violations, including the failure to reimburse the cost of slip-resistant shoes. Plaintiff alleged a violation of [Labor Code section 2802](#), which requires an employer to reimburse employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties.



Plaintiff argued that, because the restaurant required employees to wear slip-resistant, black, closed-toes shoes for safety reasons, such shoes should be provided free of cost or employees should be reimbursed for their cost.

The Court of Appeal, persuaded by the reasoning in an unpublished Ninth Circuit Court of Appeals decision, [Lemus v. Denny's, Inc.](#), and guidance from the California's Division of Labor Standards Enforcement (DLSE), held that section 2802 did not require the restaurant employer to reimburse its employees for the cost of slip-resistant shoes. Specifically, the Court held that the cost of shoes does not qualify as a "necessary

expenditure" under section 2802.

In reaching its decision, the Court followed the reasoning in *Lemus*, citing a [DLSE opinion letter](#):

"The definition and [DLSE] enforcement policy is sufficiently flexible to allow the employer to specify basic wardrobe items which are usual and generally usable in the occupation, such as white shirts, dark pants and black shoes and belts, all of unspecified design, without requiring the employer to furnish such items. If a required black or white uniform or accessory does not meet the test of being generally usable in the occupation the [employee] may not be required to pay for it."

Here, the plaintiff did not argue that the slip-resistant shoes were part of a "uniform" or were not usual and generally usable in the restaurant occupation. The restaurant did not require employees to purchase a specific brand, style, or design of shoes and did not prohibit employees from wearing their shoes outside of work.

Under California law, a restaurant employer must pay for its employees' work clothing if the clothing is a "uniform" or if the clothing qualifies as certain protective apparel regulated by OSHA or California's Division of Occupational Safety and Health (Cal/OSHA). [Labor Code and Industrial Welfare Commission Wage Order No. 5-2001](#), governs the public housekeeping industry, including restaurants. Under Wage Order No. 5, uniforms must be provided and maintained by the employer when the uniforms are required by the employer to be worn by the employee as a condition of employment. "Uniform" includes "wearing apparel and accessories of distinctive design or color." This section of the wage order specifically does not apply to protective equipment and safety devices regulated by the Occupational Safety and Health Standards Board.



On appeal, the plaintiff abandoned her alternative theory of liability that reimbursement was owed under provisions of Cal/OSHA, Labor Code sections 6401 and 6403, which require employers to furnish and provide safety equipment to employees.

The trial court had held that OSHA and Cal/OSHA provide that an employer is not required to reimburse employees for the cost of non-specialty shoes that offer slip-resistant characteristics, but are otherwise ordinary clothing in nature. However, the Court of Appeal ultimately did not decide the applicability of OSHA or Cal/OSHA. Likewise, the Ninth Circuit in *Lemus v. Denny's, Inc.* did not address whether Cal/OSHA requires reimbursement of slip-resistant footwear.

After the decision in *Townley*, there remains a question of whether reimbursement for the cost of slip-resistant shoes could be required under Cal/OSHA for safety reasons. Under Federal OSHA regulations, employers must generally provide personal protective equipment at no cost to the employee. The regulation specifically includes an exemption for non-specialty safety-toe protective footwear, which the employer permits to be worn off the job-site. Employers are also not required to pay for everyday clothing, including street shoes and normal work boots. Under California law, if protective equipment is required by Cal/OSHA, the employer is responsible for paying for the safety equipment. There is no Cal/OSHA regulation equivalent to the Federal exemption for generic non-specialty shoes. While California employers have argued (and the trial court in *Townley* concluded) that the Federal exemption should control in California, the California Court of Appeal and Ninth Circuit have so far left that question unanswered.



Takeaways

Although we now have clarity that California Labor Code section 2802 does not require reimbursement of the cost of slip-resistant footwear, there remains the question of whether such footwear could constitute reimbursable protective equipment under Cal/OSHA safety standards. Although *Townley* and the Federal OSHA exemption provide some guidance for California employers, they are reminded that neither are necessarily binding or precedential. As such, it will be important for employers to track California caselaw in this area, as well as look out for Cal/OSHA guidance. In the meantime, employers are encouraged to periodically review their policies and practices for reimbursing employee business expenses to ensure compliance with California law, including Cal/OSHA regulations.