

Rite aid Cashiers can Proceed with Class Action

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In *Hall v. Rite Aid Corp.*, the [Fourth Appellate District](#) reversed the trial court's decertification of a putative class of cashiers who challenged their employer's policy of requiring them to stand while checking out customers.

The case is the latest in a series of California appellate opinions holding that a determination on class certification must focus on the plaintiff's theory of liability — not the merits of the underlying allegations.

Kristen Hall, a former employee of Rite Aid, alleged that the company had violated the Labor Code by improperly forbidding its cashiers from sitting while they checked out customers. Hall moved for class certification, arguing that common issues predominated among potential class members because all the company's cashier/clerks had similar job duties that could be performed while seated, and that the company's standard check out counters could accommodate seats with minor modifications.

Rite Aid countered that class treatment was inappropriate because (1) the percentage of time clerks spent behind the check-out counter varied from 2 to 99 percent and (2) clerks performed a variety of different tasks when they were not checking out customers, depending on the store where they worked.

The trial court initially granted Hall's motion for class certification. Three weeks before trial, however, it reversed course and granted Rite Aid's motion for decertification. The court held that the Labor Code at issue required an examination of the employee's job as a whole rather than a discrete subpart of his or her duties. Hall appealed the decision.

The appeals court struck down the decertification order. The court based its analysis on the California Supreme Court's ruling in *Brinker Restaurant Corp. v. Superior Court*. There, the state's highest court clarified that courts considering class certification must focus on plaintiff's theory of liability and determine whether common legal and factual issues are likely to be presented. "Disputes over the merits of a case generally must be postponed until after class certification has been decided," the Court held.

With those principles in mind, the *Hall* court held that the trial court improperly focused on the merits of plaintiff's case, i.e. variations among class members regarding their job as a whole. Certification was appropriate, the court held, because plaintiff's theory of liability addressed a companywide policy that lent itself to class treatment.

"Hall's proffered theory of liability is that, regardless of the amount of time any particular Cashier/Clerk might spend on duties other than check-out work, Rite Aid's uniform policy transgresses (the Labor Code) because suitable seats are not provided for that aspect of the employee's work that *can* be reasonably performed while seated." (Emphasis in original).

Accordingly, the court held that Hall's case could proceed as a class action. Whether a particular case is suitable for class treatment can present challenging issues.

[Barger & Wolen](#) attorneys are available to answer any questions you may have.

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