

Legal Alert

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QUESTION: DO CALIFORNIA EMPLOYEES HAVE A LEGAL RIGHT TO SIT AROUND ON THE JOB?

ANSWER: THE CALIFORNIA SUPREME COURT SET BENCHMARKS FOR LEGALLY SUITABLE WORK SEATS!

Right to be Sedentary?

I wasn't sitting around expecting that "suitable seats" at work was one of the most important public policy issues in California. Perhaps water conservation, earthquake preparedness, or state budget problems might have had prime seats at the table. But in April of 2016, the California Supreme Court got to the bottom of the issue of what California Law means when it says that:

All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

Kilby v. CVS Pharmacy, Inc., 63 Cal. 4th 1 (Cal. 2016).

In an era when employees are requiring standing desks or asking for treadmill desks, California mandates seats at work. California seems to have a deep-seated interest in employees sitting around at the job. Pay attention if you are the chairperson for the Human Resources department!

Who Had Standing to Contest Seating?

Nykeya Kilby worked for CVS Pharmacy and Kemah Henderson worked for JPMorgan Chase Bank. Ms. Kilby worked for eight months as a customer service representative for CVS Pharmacy. She was told during the interview and training process that she would need to stand while performing her various duties.

Ms. Kilby's duties varied depending on the store where she was working and the shift she was working. Her duties included removing trash, vacuuming, operating the cash register, stocking shelves, organizing products and gathering shopping baskets. CVS did not provide Ms. Kilby with a seat according to her allegations. She filed a federal class action lawsuit.

Kemah Henderson and three other bank tellers filed a class action suit against JPMorgan Chase Bank for not providing suitable seating. The bank tellers at Chase had various duties such as cashing checks, accepting deposits and providing withdrawals. They also would escort customers to safety deposit boxes, work the drive-up teller windows and make sure that the automatic teller machines were working.

Old Benchmarks in California Seating!

The California legislature enacted a statute in 1911 requiring the mercantile industry to "provide suitable seats for all female employees." The California Industrial Welfare Commission was established in 1913 and settled with the authority to issue Wage Orders. Eventually, in 1972-1973, the California Labor Code was amended to allow the Industrial Welfare Commission to

make its Wage Orders applicable to all employees regardless of age or gender. Now even guys can sit down on the job.

The California Industrial Welfare Commission was defunded by the California legislature in 2004, but its Wage Orders remain effective. There are 18 Wage Orders still in effect that “are to be accorded the same dignity as statutes.” So the standing rulings of a state agency that went out of business in 2004 are still considered to have the force of statutes in California.

The California Supreme Court Took the Load Off Employees by Setting Some Rules!

The California Supreme Court took 25 pages to cover over 100 years of the history of the right of employees to sit on the job in California. After all that effort, the answer to employers as to whether or not seats need to be provided to employees remains a resounding: “Well, it depends....”

“Nature of the Work?”

The court first considered when “the nature of the work” is compatible with sitting. The “nature of the work” is based on what an employee does at a given location rather than upon the entire range of the employee’s duties. “If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with the performance of any other tasks that may require standing, a seat is called for.”

“Reasonably Permits?”

Next the court decided how to determine whether the nature of the work “reasonably permits” the use of a seat.

Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.

Thus, the decision as to whether seating is required will be decided on a situation by situation basis “objectively based on the totality of the circumstances.” Great clarity and guidance for employers!

When the Music Stops, is a Seat “Available?”

The court also said that if an employee complains that the employer has not provided a seat, the employee does not need to show that a suitable seat is available. Rather, “if an employer argues there is no suitable seat available, the burden is on the employer to prove unavailability.” Employers are now sitting ducks for lawsuits.

If your company has concerns about employment issues, please pull up a chair and call me.