

Sitting on the Job: When California Employers Must Provide Seats

Employees are entitled to sit at work when the nature of the work reasonably permits the use of seats.

On April 4, 2016, the California Supreme Court, in an opinion authored by Justice Carol A. Corrigan, clarified California's rules for determining when employees are entitled to sit at work. The opinion held that California law requires employers to provide seating when the nature of the work "reasonably permits the use of seats." The court clarified that the nature of the work "reasonably permits the use of seats" if being seated does not interfere with the employee's task at hand.

Questions the Ninth US Circuit Court of Appeals certified to the California Supreme Court prompted the decision. Several lawsuits involving employees' claims asserting they were wrongfully denied seating were appealed to the Ninth Circuit from United States district courts, including class actions brought by cashiers at CVS drug store (*Kilby v. CVS Pharmacy, Inc.*) and Chase Bank (*Henderson v. JPMorgan Chase Bank NA*). Due to the lack of clear authority on this issue, the Ninth Circuit asked California's highest court for an opinion clarifying California law.

The Court's Holding

The California Supreme Court addressed the following questions from the Ninth Circuit: (1) Does the phrase "nature of work" refer to individual tasks performed throughout the workday, or to the entire range of an employee's duties performed during a given day or shift? (2) When determining whether the nature of the work "reasonably permits" use of a seat, what factors should courts consider? Specifically, are an employer's business judgment, the physical layout of the workplace, and the characteristics of a specific employee relevant factors? (3) If an employer has not provided any seat, must a plaintiff prove a suitable seat is available in order to show the employer has violated the seating provision? The Court answered that:

- The "nature of the work" refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a "holistic" consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.
- 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.

- The nature of the work aside, if an employer argues there is no suitable seat available, the burden is on the employer to prove unavailability.

Practical Considerations for California Employers

The California Supreme Court decision makes clear that if an employer wishes to avoid providing seating, the employer must demonstrate that suitable seating is not available.

An employer cannot escape the seating requirement because some of the employee's tasks cannot be performed while seated. Nor must an employer provide seating simply because some discrete task could possibly be performed while seated. The standard is whether some of the work can "reasonably" be performed while seated, which is looked at based on a "totality of the circumstances," including the: frequency and duration of tasks; feasibility and practicality of providing seating; employer's evaluation of the quality and effectiveness of overall job performance; and physical layout of the workspace. However, neither the employer or its customers' preferences, nor physical differences among employees, are appropriate considerations.

Employers that do not provide seating should re-examine whether seating can be provided without interfering with the performance of job duties, and may need to alter their work environments to provide seats for employees. This decision most obviously impacts retail and hospitality industries, as well as other industries with cashiers and tellers; however, the decision is not limited to those environments.

Even if the job duties cannot reasonably be performed while seated, importantly, when requested, employers must provide seating when an employee is still on the job, but not actively engaged in any duties.

Finally, while keeping in mind that the considerations outlined in the California Supreme Court opinion will lead to different results depending on the specific job, employers should no longer assume that certain job positions cannot be done from a seated position.

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