

Take A Seat! California Supreme Court Provides Clarity on California's Suitable Seating Laws

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On April 5, 2016, the **California Supreme Court** issued its much-anticipated opinion addressing important issues surrounding California's suitable seating laws. As nearly every California Wage Order contains suitable seating provisions, the Court's ruling will have a significant and widespread impact on California employers. A typical suitable seating provision of a California Wage Order provides the following:

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

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties. IWC Wage Order 4-2001, Sec. 14.

THREE QUESTIONS BEFORE THE NINTH CIRCUIT

With that in mind, the Supreme Court decided three certified questions, which are currently before the Ninth Circuit in two separate class action lawsuits. The two appeals before the Ninth Circuit address these issues in the context of IWC Wage Order 4-2001 (Professional, Technical, Clerical, Mechanical and Similar Occupations) and IWC Wage Order 7-2001 (Mercantile Industry), respectively. The former involves CVS cashiers who, by the nature of their occupation, stand nearly 100 percent of the time; the latter involves bank tellers who are similarly situated and required to stand for the majority of their work day.

The certified questions and the Supreme Court's rulings are as follows:

Question 1: Does the phrase "nature of the work" refer to an individual task or duty that an employee performs during the course of his or her workday, or should courts construe the "nature of the work" holistically and evaluate the entire range of an employee's duties?

1. If the Courts should construe "nature of the work" holistically, should the Courts consider the entire range of an employee's duties if more than half of an employee's time is spent

performing tasks that reasonably allow the use of a seat?

Court's Ruling: "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." See *Nykeya Kilby v. CVS Pharmacy, Inc.*, 2016 Cal. LEXIS 1950 at 3-4, (Cal. Apr. 4, 2016).

The Court elaborated further by stating "Courts should look to the actual tasks performed, or reasonably expected to be performed, not to abstract characterizations, job titles, or descriptions that may or may not reflect the actual work performed." *Id.*

Question 2: When determining whether the nature of the work "reasonably permits" the use of a seat, should courts consider any or all of the following: (a) the employer's business judgment as to whether the employee should stand; (b) the physical layout of the workplace; or (c) the physical characteristics of the employee?

Court's Ruling: "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." *Id.* at 4 (emphasis added).

Question 3: If an employer has not provided any seat, does a plaintiff need to prove what would constitute "suitable seats" to show the employer has violated the applicable Wage Order?

Court's Ruling: "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." *Id.*

The Court's ruling will affect a vast number of employers throughout California, and may likely influence other states' approach to their suitable seating requirements. Even more evident is the fact that avenues for litigation against California employers just widened significantly based on these newly clarified suitable seating requirements.

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