Have A (Suitable) Seat

Insights
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The California Supreme Court recently established the right of California employees to sit down on the job. The court was interpreting an obscure and rarely-enforced (until now) provision of California's wage orders that requires employers to provide employees with "suitable seats" when the nature of their work reasonably permits the use of seats. This ruling likely will leave many employers vulnerable to lawsuits under the Private Attorneys General Act for not providing seats for their employees.

The case involved separate lawsuits brought by retail store employees and bank tellers claiming they were unlawfully denied seats at work. The court determined that the pertinent question is whether the nature of the work reasonably permits the use of seats. The court held that in examining the "nature of the work," courts must look to the actual tasks performed (or expected to be performed) by the employee, not job titles or job descriptions that may not accurately reflect the job. Whether the work "reasonably permits" the use of seats involves a look at the totality of the circumstances, according to the court. First, you must look at the employee's job tasks, grouped by location, and whether those tasks can be performed white seated or require standing. Against this assessment you must balance considerations of feasibility. This, in turn, requires you to look at whether providing a seat would unduly interfere with other standing tasks, whether the frequency of transition from sitting to standing may interfere with the work, and whether seated work would impact the quality and effectiveness of overall job performance. With respect to the last factor, an employer's mere preference that employees stand while working is not enough, but the analysis should take into account the employer's right to determine job duties and its reasonable expectations regarding customer service. The physical layout of the work area is a relevant factor to consider too, but you may not intentionally design a work area to preclude the use of a seat.

Even if the nature of employees' work requires standing, the second section of the wage order provides that when employees are not engaged in the active duties of their employment an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees must be permitted to use such seats when it does not interfere with the performance of their duties. The court did not place as much emphasis on this section but noted that it applies during lulls in operations when an employee, while still on the job (and not on a formal rest break) is not actively engaged in any duties. Thus, even if providing a seat for employees while working is not feasible if those employees experience times of inactivity while on the clock, seats must be made available to them during those times.

Finally, the court maintained that in the event of an employee challenge, the burden is on the employer to show that no suitable seating exists. Also, there is no requirement that an employee requests a seat before suing for not being provided with one. The practical impact of this is troubling. Virtually any employee who does not already sit while working can now assert the right to a seat and the employer must be able to prove (before a jury, no less) that it is not feasible to provide suitable seating in order to avoid hefty PAGA penalties. Add one more lawsuit trap for California employers to have to worry about.

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