



California Supreme Court Rules That Employees May Have Right To Sit During Working Hours

Insights

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On April 4, 2016, the California Supreme Court ruled that employers must provide an employee with seating if the employee's tasks at a discrete location make seated work feasible, even if the employee's job duties include other standing tasks. This ruling is likely to have a dramatic effect on many California employers, particularly those in the retail industry. As a result, you will now have to consider whether the nature of your employees' work permits work to be performed seated and whether you will have to provide seating (*Kilby v. CVS Pharmacy, Inc.*).

Background: State Supreme Court Asked To Weigh In

The California Supreme Court's ruling answers questions that arose in two federal appeals of cases brought by CVS Pharmacy cashiers and bank tellers regarding the proper interpretation of California wage orders' requirement to provide seating to employees. The 9th Circuit Court of Appeals, which hears federal appeals over cases arising in California and other western states, asked the state Supreme Court to resolve the dispute.

While the state wage orders provide that, "all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats," there has been a lack of controlling precedent interpreting the phrase "the nature of the work." The dispute arose over whether this phrase refers to discrete, individual tasks, or whether it refers to the entire range of an employee's duties. The federal court was also unclear about which factors should be considered to determine whether the nature of the work "reasonably permits" the use of a seat.

The employees argued that the wage orders' seating requirement refers to discrete tasks performed by worker. If that interpretation were adopted, an employee engaged in any task that could objectively be performed while seated would be entitled to have a suitable seat at work provided by the employer.

On the other hand, the employers argued that the wage orders required a "holistic" approach, such that a variety of factors needed to be examined in making a determination about whether a seat should be provided. This would mean that all of an employee's tasks and duties throughout a shift would be scrutinized in combination with the layout of the workplace, the employer's business judgment, and other relevant factors.

In the end, the California Supreme Court disagreed with both of these interpretations, but issued a ruling that will turn out to be a victory for employees and plaintiffs' attorneys.

Decision: Court Adopts Employee-Friendly Test

In answering the question and developing the test, the Supreme Court found that the "nature of the work" element of the seating requirement refers to the actual tasks performed by an employee at a particular location, rather than a holistic consideration of the entire range of an employee's duties anywhere on the jobsite during a shift.

The Court noted that focusing on actual work done by particular location would allow courts to consider the relationship between the standing and sitting tasks done there, the frequency and duration of those tasks with respect to each other, and whether sitting, or the frequency of transition between sitting and standing, would unreasonably interfere with other standing tasks or the quality and effectiveness of overall job performance.

The Supreme Court also found that whether the nature of the work "reasonably permits" sitting is a question to be determined objectively based on a totality of the circumstances test. This test can include an examination of numerous factors, such as the frequency and duration of tasks, as well as the feasibility and practicability of providing seating.

The Court held that an employer's business judgment and the physical layout of the workplace can be relevant factors, but are not dispositive. Also, because the inquiry focuses on the nature of the work and not the nature of the worker, the Court ruled that an individual employee's physical characteristics are not relevant to the inquiry.

Finally, the Supreme Court held that if an employer argues that there is no suitable seating available, the burden is on the employer to prove unavailability.

What This Means For California Employers

This decision means you can no longer rely on job titles, job descriptions, or notions of what jobs should be performed standing when making a determination about whether you have an obligation to provide seating. Rather, in light of the Supreme Court's ruling, you will be required to make an individualized assessment of tasks performed by employees to determine whether an employee is entitled to perform his or her job seated. This will require a fact-intensive review of a host of factors, which could yield different results even within the same job title.

Employers who are not compliant with the seating requirements under California's wage orders could face class action lawsuits and be subject to penalties under California's Private Attorney General Act. Therefore, you should consider undertaking an audit of the tasks performed by your employees to ensure that you are on the right side of the law.

If you have any questions about this decision, or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our California offices:

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