

Employers May Be Obligated To Provide Suitable Seating To Employees

In *Kilby v. CVS Pharmacy, Inc.*, the California Supreme Court clarified an employer's obligation under California Wage Orders to provide "suitable seats when the nature of the work reasonably permits the use of seats." The Court answered three questions posed by the Ninth Circuit Court of Appeals, which is considering two appeals of class actions decisions concerning suitable seating.

First, the Court considered whether the phrase "nature of the work" refers to individual tasks performed throughout the workday, or to the entire range of an employee's duties performed during a given day or shift. The Court took a middle-of-the-road approach and concluded the phrase refers to the tasks an employee performs at a given location for which the employee is claiming a right to a suitable seat, and not to "the entire range of an employee's duties anywhere on the jobsite during a complete shift." According to the Court, if an employee's tasks 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.

Second, the Court articulated factors that should be considered when determining whether the nature of the work "reasonably permits" use of a seat. According to the Court, whether the nature of the work reasonably permits sitting is a fact-specific 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. An individual employee's physical characteristics should not be considered.

With respect to "business judgment," the Court found that an employer's mere preference for standing should not be considered. The Court, however, recognized that an employer's reasonable expectations regarding customer service and its role in setting job duties should be considered.

In undertaking this analysis, consideration must be given to the feasibility of providing seats. Feasibility considerations may include: (1) whether providing a seat would unduly interfere with other standing tasks; (2) whether the frequency of transition from sitting to standing may interfere with the work; or (3) whether seated work would impact the quality and effectiveness of overall

by Emily Leahy & Lisa M. Pooley



job performance.

Finally, the Court held that if an employer seeks to be excused from the seating requirement, the employer has the burden of proving that compliance is not feasible because no suitable seating exists.

Employer Takeaways

In light of this California Supreme Court decision, employers should examine the nature of their employees' job duties and work environments to determine whether certain types of work and work locations are amenable to seated employees.

This publication was written by Emily Leahy and the Labor Section Client Services Team.

For more information, please contact:

Emily Leahy, Counsel
415-995-5155
ELeahy@hansonbridgett.com

Lisa M. Pooley, Partner
415-995-5051
lpooley@hansonbridgett.com