

Ok...Are You Sitting Down?

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More than five years ago, the California plaintiffs' bar launched a series of lawsuits against various retailers alleging that they were violating a part of the California wage orders that require suitable seating to be available to workers. For the mercantile industry, the regulations require: (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. Other wage orders have similar provisions. The lawsuits got sidetracked through a variety of issues including unfavorable rulings at the trial court level. Recently, the Ninth Circuit certified various issues regarding the suitable seat regulations to the California Supreme Court for clarification. On April 4, the U.S. Supreme Court answered those questions. The court's answer likely invites a renewed round of litigation. The Supreme Court held (1) that the "nature of the work" in the regulation 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"; (2) that "[w]hether 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"; and (3) that "if an employer argues there is no suitable seat available, the burden is on the employer to prove unavailability." The decision will make a defense of these seat cases more fact intensive and, therefore, more complicated. While the California plaintiffs' bar may be giving the court a standing ovation, employers may need to sit down, roll up their sleeves and take a closer look at how they configure employee workstations.

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