California Supreme Court Clarifies When Employers Must Provide Employees With Seats

April 6, 2016

On April 4, 2016, the California Supreme Court issued an opinion with important implications for all California employers. For the first time, the court interpreted the meaning of wage orders promulgated by California’s Industrial Welfare Commission that provide that “all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” The court held that employers must examine the nature of employees’ tasks at each location where they perform work and determine whether the nature of the work at that location reasonably permits use of a seat.

In so holding, the Supreme Court rejected the employers’ argument that consideration of whether an employee should be provided a seat depends on a “holistic” consideration of the entirety of the tasks performed by an employee. The decision suggests an opening for potential future class actions in which employees allege that they have not been provided seats despite performing tasks that could be accomplished while sitting.

The Supreme Court’s opinion, which was issued in the consolidated cases of Kilby v. CVS Pharmacy Inc. and Henderson v. JPMorgan Chase Bank, came after JPMorgan Chase Bank defeated a bid for class certification and CVS Pharmacy won on summary judgment in federal district court. The employees argued that their employment as stock clerks, cashiers, and bank tellers required their employers to provide them with seating even though many of their daily duties required them to stand. On appeal, the Ninth Circuit certified to the California Supreme Court the question of 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. The Ninth Circuit also asked the Supreme Court to determine what factors should be considered in deciding whether the nature of an employee’s work “reasonably permits” use of a seat.

The Supreme Court held that the “nature of the work” that an employer must consider in determining whether to provide an employee with a seat is not the entire range of an employee’s duties anywhere on the jobsite during a complete shift, but rather the tasks performed at a given location within the jobsite during the workday. The court rejected the employers’ argument that whether an employee required a seat depended on a “holistic” assessment of an employee’s entire shift, an approach the court concluded would amount to nothing more than weighing all of an employee’s “standing” tasks against all of her “sitting” tasks. Such an assessment would ignore the nature and duration of specific tasks, amounting to an “all-or-nothing approach” that could deprive an employee of a seat even when he “spends a substantial part of his workday at a single location performing tasks that could reasonably be done while seated.”

In rejecting this approach, the Supreme Court held that “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.” The court also held that whether the nature of an employee’s work “reasonably permits” sitting is a question to be determined objectively, based on an inquiry into the nature of the work, not the specific employee’s individual needs. Such an inquiry may include such factors as the employer’s business judgment and the physical layout of the workspace, but does not include the physical characteristics of the individual employee. The court also held that, to the extent the employer claims that compliance is infeasible because no “suitable seating” exists, the burden will be on the employer to prove this.

The Supreme Court’s opinion potentially opens the door for future class and representative action litigation brought by employees alleging that they have been deprived of seats despite the nature of their work reasonably permitting them to use seats. The court’s holding that whether a seat is reasonably permitted depends on objective criteria will likely lead to plaintiffs’ lawyers seeking to certify broad classes of employees engaged in similar tasks regardless of differences among individual employees’ specific needs. Employers with locations in California should consult counsel to determine whether they are in compliance with California law, or they may soon find themselves “sitting” in court. Please contact the authors, your McGuireWoods contact, or any member of McGuireWoods’ California labor and employment team with questions.

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