

Flurry of California Suits Alleging Breach of Employee-Seating Regulations

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Although receiving little attention, California regulations have long required employers in many industries to provide seats for employees when the nature of the work permits it. Now, because of a flurry of lawsuits alleging violations of the regulations, employers are advised to sit up and take note. Costly litigation might be avoided for the price of a stool!

In two recent cases, *Bright v. 99¢ Only Store*¹ and *Home Depot v. Superior Court*,² California courts of appeal have ruled that employees may bring class action lawsuits against employers who fail to provide them with seats during work hours.

The specific requirement is:

All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

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.³

To varying degrees, employee-seating requirements exist in at least 10 other states including Florida, Massachusetts, Montana, New Jersey, New York, Oregon, Pennsylvania, South Dakota, West Virginia, and Wisconsin.

Although it used to be that only the labor commissioner could enforce the California requirement, now, under the Private Attorney General Act (PAGA), employees can step into the shoes of the labor commissioner and sue on behalf of themselves and others. Penalties can add up quickly: \$100 for each aggrieved employee for each pay period for the initial violation, and \$200 for each aggrieved employee for each pay period for each subsequent violation.

Since the *Bright* and *Home Depot* decisions, dozens of lawsuits have been filed, most against retail stores and financial institutions. Other likely target occupations include hotel front desk clerks, restaurant hosts, theater box office clerks, security guards, and employees who are relatively stationary during all or part of their workdays and where there is room for a stool or chair.

Any employer with employees in these sorts of industries or occupations is advised to consider providing seats at the employees' work stations or, if that is not feasible, somewhere nearby.

FOOTNOTES

1 189 Cal. App. 4th 1472 (2010).

2 191 Cal. App. 4th 210 (2010).

3 Wage Order 14 for the Agricultural Industry and Wage Order 16 for Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries have slightly different seating requirements. Wage Order 15 for Miscellaneous Employees has no seating requirement.

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