

Suitable Seating Rules Under California Law

By: David W. Tetzlaff

<http://commercialcounselor.com/>

“Attention Kmart Shoppers” is a phrase that [entered the popular lexicon](#) years ago, after first accompanying a Blue-Light Special at a Kmart store in 1965. Well known to the public, and lampooned by comics, this catch phrase is synonymous with customer service in the form of a loudspeaker alert to shoppers that bargains await.

But customer service at some retail stores such as Kmart could move in a different direction if future lawsuits over suitable seating for cashiers, and other employees prevail. A recent court opinion appears to suggest such suitable seating requirements may be enforceable, resulting in requiring employees, who previously stood throughout their shifts, being provided an opportunity to sit if the nature of their work reasonably permits the use of seats.

Suitable seating requirements for employees appear in several Wage Orders in California including the wage order covering mercantile (retail) employees. Industrial Welfare Commission, [Wage Order No. 7](#), Section 14 provides:

14. SEATS

(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.

A recent lawsuit against Kmart is thought to be the first resulting in a trial decision on the subject of suitable seating. [[Garvey v. Kmart](#) (12/18/12)]

Kmart survived the attempt by plaintiffs in this class action to use the suitable seating rules to require it to redesign cashier and bagging areas to provide seats for employees. Notably, the court ruled that “it is reasonable for Kmart to require its cashiers to stand while processing customers out the door so as to maximize the efficiency of the process and to project to its customers an attitude of efficiency and readiness to assist customers.”

But the court also noted that this rationale does “not justify requiring a cashier to stand at a stall when the customer lane is empty” and, although not argued by the plaintiffs, the court suggested that lean type stools may be required even where a legitimate business reason prevents seating, such as legitimate customer service policies. The court went so far as noting that, although it was not argued in the *Garvey* case, future plaintiffs in suits against other like retail stores can develop evidence related to lean-stools which “allow an individual to place most of their weight on a supported seat, while remaining in a more upright, leaning position.”

One thing remains clear. Class action employment litigation based on suitable seating rules is on the rise. Employers and their legal counsel should consider such rules in light of current work environments, and proactively take steps to minimize the potential risk of such suits, including the costs of defense and potential liability that may result.

Link to original article: <http://commercialcounselor.com/suitable-seating-rules-under-california-law/>

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.