

Hope You're Sitting Down for This: The Latest in California Class Claims

California employers, beware! There is a little-known provision in the California wage orders which appears to be based on a conversation between George Costanza and Jerry Seinfeld on an episode of Seinfeld.

GEORGE: Let me ask you something. When you go into a store, does it bother you that they make the security guard just stand there all day?

JERRY: No.

GEORGE: See, didn't bother Susan either. That's why I'm different. I can sense the slightest human suffering.

JERRY: Are you sensing anything right now?

GEORGE: Let me just say this. It is inhumane to make a man stand on his feet, in one spot for eight hours a day. Why shouldn't he have a chair?

Apparently, several plaintiffs' attorneys saw this episode of Seinfeld and recently have filed class actions based upon the obscure provision of the California wage orders which requires employers to make available "suitable seats" to all employees "when the nature of the work reasonably permits the use of seats." The wage orders additionally require that, for employees whose work requires standing, "an adequate number of suitable seats shall be placed in reasonable proximity to the work area" and the employees may use such seats "when it does not interfere with the performance of their duties."

The wage orders do not provide for penalties associated with violating the seating provisions. However, plaintiffs' attorneys are using the California Private Attorneys General Act or "PAGA", which provides for penalties relating to certain labor laws. The PAGA penalties are stiff: \$100 per aggrieved employee per pay period for the initial violation, and \$200 per aggrieved employee per pay period for each subsequent violation. Cal. Lab. Code section 2699(f)(2). The incentive for bringing these PAGA class actions is the potentially hefty attorney fee. To date, we are not aware of any court awarding PAGA penalties for violation of the seating provision. But, California employers should not ignore the seating provision and should take all appropriate action to come into compliance with it.

If you have questions regarding class actions, please contact the author of this alert, [Jennifer Robinson](#), or [Brad Harvey](#), another member of Miller & Martin PLLC's Class Action and Labor & Employment Practice Group.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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