Will "Suitable Seating" Collective Actions Hit the Entertainment Industry?

By Lara Shortz, Esq.

California's Industrial Welfare Commission Wage Orders specify that employers must provide "suitable seating" to employees where "the nature of the work reasonably permits the use of seats." The law was originally intended to address concerns regarding adequate seating on production lines with heavy machinery, but it has recently seen a rash of collective actions by plaintiffs' attorneys. Banks, pharmacies, retailers and grocery stores have all been sued based on alleged violations of this provision in the Wage Orders.

Plaintiffs in these cases often seek millions of dollars in connection with alleged violations of suitable seating requirements, even in instances where no one on the job ever requested a seat. In Green v. Bank of America No. 11-56365 (February 11, 2013), the Ninth Circuit held that "employees need not make a request for suitable seating before filing a lawsuit…" Additionally, many of these cases are filed by plaintiffs who hold jobs that are typically performed by individuals while standing.

In 2011, a plaintiff filed a class action lawsuit against Disneyland alleging that staff was not given access to suitable seating. Disneyland's attorneys responded that most Disneyland employees had jobs that did not necessitate providing seating. While the case was ultimately dismissed in March of 2013 due largely to Plaintiff's misconduct throughout the litigation, it begs the question regarding how courts will define some of the nebulous language, particularly the "nature of the work" and "suitable seating" aspects of the Wage Order. In two separate cases in December 2013, the Ninth Circuit asked the California Supreme Court to provide clarification regarding much of Section 14's terminology.

Considering the nature of the work, the entertainment industry could become a major target for these kinds of lawsuits. Actors, caterers, script supervisors, camera operators, editors, hair and makeup staff, grips, line producers, production assistants, extras, interns, amongst many others, all comprise a television or film set. To make matters potentially even more unclear regarding the law, all of these people have different requirements for their unique jobs on set. If you have ever been on a film set, you certainly know that the extras require seating, but do you know if the production assistants responsible for a myriad of tasks that keep them hopping on their feet all day long require seating?

To the extent that employers do not provide seats to their employees, they should be sure that the employees' duties require standing and/or movement. Employers should also determine if there is an alternative arrangement that may be reasonable. For example, in Garvey v. Kmart Corporation (2012 WL 6599534), the court suggested that while a lean-stool may be a reasonable

seating alternative to no stool at all, Kmart was found to have a genuine customer service rationale for requiring its cashiers to stand (i.e., to supply efficiency and appearance of efficiency). The court did suggest, however, that where a customer lane is empty (on a slow day, for example) the customer service rationale may not apply. The takeaway from this decision is that where there are long periods of the work day that do not require standing and/or movement, employers may be liable for failure to supply suitable seating.

Further, a best practice for employers is to communicate their seating policy to employees via their employee handbooks and encourage employees to address any concerns regarding suitable seating. Whether or not the Supreme Court will address these issues and clarify the law remains to be seen, but entertainment professionals should keep up to date with the requirements that could have a major impact on their industry. As the state of the law evolves, bearing in mind that employees need not request seats to avoid liability, studios and production companies should be proactive in providing seating to employees whenever possible on sound stages and sets. Doing so could lessen the chances to fall prey to a costly lawsuit down the line.

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