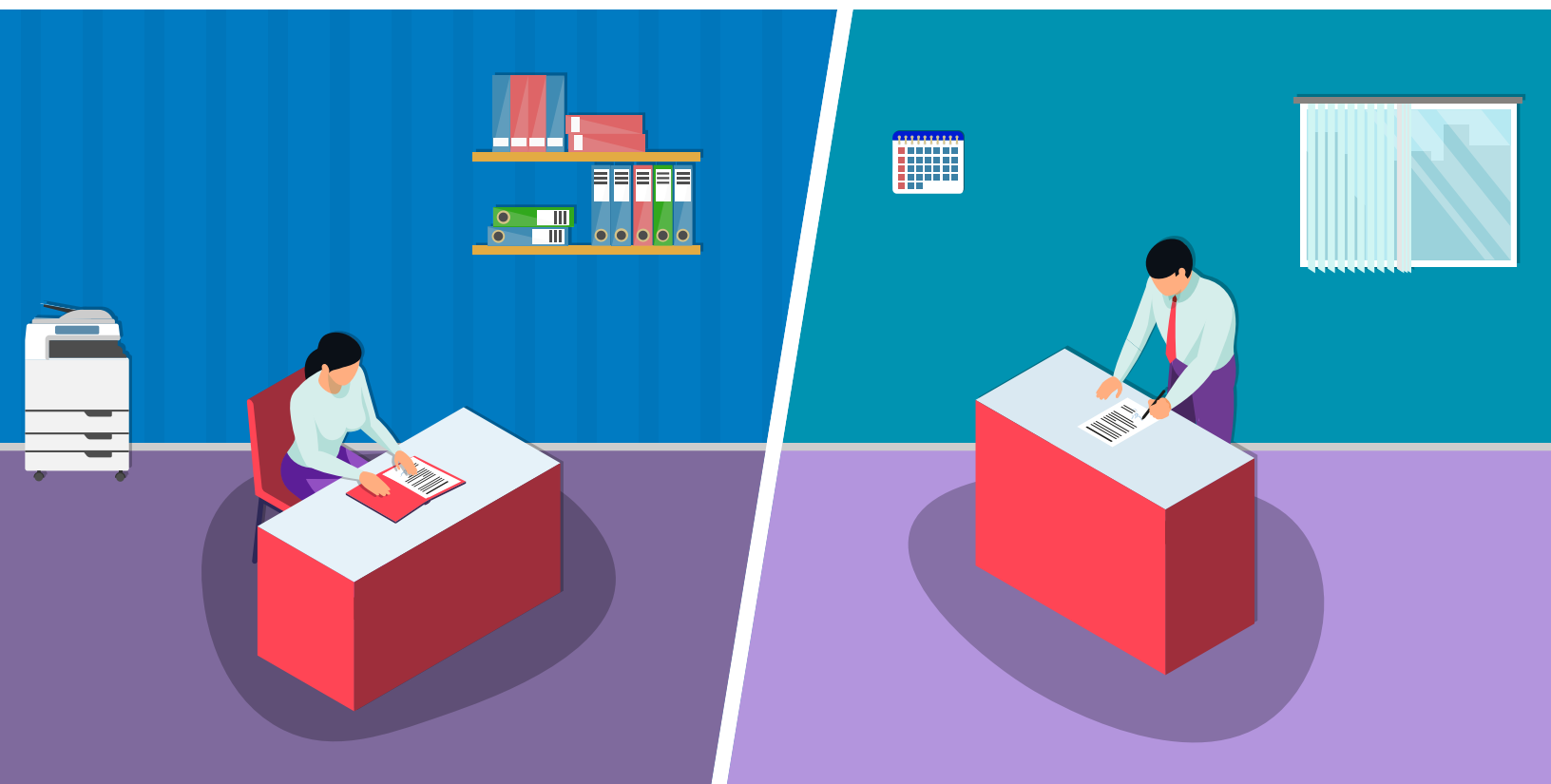




SUITABLE SEATING REQUIREMENTS FOR CALIFORNIA EMPLOYEES

California law requires many employers to provide suitable seating when the nature of the work reasonably permits, both during work activities and during breaks.

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In California, most employers must provide their employees with **suitable seating** to use while performing their duties, as long as the nature of the work reasonably permits the use of seats.¹ Even when the work requires standing, most employers must place seats in reasonable proximity to their employees' work areas for use during lulls in their duties.²

As with any legal rule, California's seating requirements come with several caveats and exceptions. This article explores those distinctions and looks at how courts have interpreted the seating requirement.

Legal Background



California’s wage and hour laws are governed primarily by the Labor Code and a series of wage orders issued by California’s Industrial Welfare Commission (“IWC”).³ The wage orders are enforceable regulations specifying minimum requirements that employers must follow with respect to wages, hours, and working conditions.⁴

In total, there are eighteen wage orders. Sixteen cover specific industries or occupations, one covers employees not covered by any other wage order, and one is a general minimum wage order.⁵ The IWC maintains a complete list of the wage orders [on its website](#).

The wage orders’ seating requirements first appeared in 1919. Back then, they applied only to women and children.⁶ They have since been amended to apply to all employees regardless of age or gender.⁷

Of the IWC’s sixteen industry- and occupation-specific wage orders, fourteen include an identical seating requirement:

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.⁸

The wage orders for two industries have their own language regarding seating requirements: **(1)** Wage Order #14, which applies to agricultural occupations; and **(2)** Wage Order #16, which applies to certain on-site occupations in the construction, drilling, logging, and mining industries.⁹

For agricultural occupations, Wage Order #14  states as follows:

SEATS

When the nature of the work reasonably permits the use of seats, suitable seats shall be provided for employees working on or at a machine.¹⁰

For certain on-site occupations in the construction, drilling, logging, and mining industries, Wage Order #16  states as follows:

SEATS

Where practicable and consistent with applicable industry-wide standards, all working employees shall be provided with suitable seats when the nature of the process and the work performed reasonably permits the use of seats. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.¹¹

Finally, for occupations that don't have an occupation-specific wage order that applies to them (i.e., miscellaneous occupations), there is no seating requirement.¹² Employees in these industries, however, are rare because the sixteen occupation-specific wage orders are broad enough to cover most employees in California.

Because the requirements for Wage Orders #14, #16, and #17 are less commonly applied than those under the other wage orders, the remainder of this article focuses on the rules that generally apply under the other wage orders.

Suitable Seating During Work Activities



With a few exceptions, employers must permit employees to sit when the nature of the work reasonably permits the use of seats.¹³ Courts have declined to adopt a clear test to decide whether the nature of the work reasonably permits the use of seats. Rather, various workplace factors are considered to determine if employees are entitled to a seat and if such seating is reasonable.

2.1 Defining the “Nature of the Work”

To determine whether employers must permit seating, the “nature of the work” must first be defined. The California Supreme Court has characterized the *nature of the work* to be both a location-based and task-based inquiry into the employee’s actual or expected duties.¹⁴

Under this approach, courts will look at subsets of an employee’s total tasks performed at a given location and consider whether it is feasible for the employee to perform each set of location-specific tasks while seated.¹⁵ The longer or more

frequently a task is performed at a given location, the more important that task is to determining whether the employee has a right to sit while performing it.¹⁶

The focus of the *nature of the work* analysis is on the actual tasks required by the employee's duties at a given location, not to abstract characterizations, job titles, or descriptions that may or may not reflect the actual work performed.¹⁷ Additionally, courts will consider the overall job duties performed at the particular location by *any* employee while working there (not just the specific employee in question), and whether those tasks reasonably permit seated work.¹⁸

2.2 When Work “Reasonably Permits” Seating

Seating must be *reasonable* to be required. Courts consider the totality of the circumstances to determine reasonableness.¹⁹ This test, in part, balances two primary considerations:



The Nature of the Tasks. The analysis begins with an examination of the relevant tasks, grouped by location, and whether the tasks can be performed while seated or require standing.²⁰



Feasibility of Seats. The next question is whether providing a seat would unduly interfere with other standing tasks, whether the frequency of transition from sitting to standing may interfere with the work, or whether seated work would impact the quality and effectiveness of overall job performance.²¹

Courts are permitted to consider a variety of other factors in addition to those listed above, depending on the situation.²² The weight given to any relevant factor will vary in each case.²³

The level of customer service, for example, may be considered when determining if seating is reasonably permitted.²⁴ Employees who are expected to provide a certain level of customer service may be viewed by their employers or the customers as providing better customer service while standing. But courts require customer service considerations to be assessed along with other relevant tasks and obligations, in determining whether the nature of the work reasonably permits use of a seat at a particular location.²⁵

Courts will also consider the employer's business judgment. But an employer's business judgment is not dispositive and must be considered objectively in light of the employee protections provided by the wage orders. An employer's *mere preference* that particular tasks be performed while standing will be disregarded, as employers are not permitted to arbitrarily define certain tasks as “standing” ones.²⁶

Courts also consider the physical layout of a workspace to determine reasonableness. As such, an employee may be entitled to a seat because it does not interfere with performance of standing tasks and, thus, would be reasonable.²⁷

2.3 The Key Takeaway

Usually, if the location where the employee is assigned during most of their day permits seating, the employee is entitled to a seat. But if the employee is frequently transitioning between sitting and standing, or if sitting would unreasonably interfere with other standing tasks or the quality and effectiveness of overall job performance, the employee is probably not entitled to a seat.²⁸

Seating Required During Lulls in Operation



Lulls in operation occur when an employee, while still on the job, is not actively engaged in any duties. During lulls in operation, employees are generally entitled to an adequate number of suitable seats within reasonable proximity to their work area.²⁹ As such, most employees are entitled to a seat under fourteen categories of occupations and industries stated in the wage orders.

EXAMPLE

A restaurant employs a server to take orders and bring food to its customers. When the restaurant has no customers, the server does not have any tables to wait on. The server, at that point, might not have any active duties while on the job. If so, the server would be entitled to suitable seats within reasonable proximity to their work area.

Exceptions to the requirement of suitable seating during lulls in operation are in agricultural occupations and certain on-site occupations in the construction, drilling,

logging and mining industries.³⁰ In those occupations and industries, seating generally depends on whether the nature of the work permits.³¹ There is no specific reference or requirement regarding seating during lulls in operation.³²

Seating Required During Breaks



Nonexempt employees are required to take a ten-minute rest break if they work more than three-and-a-half hours. For more information illustrating how many rest periods must be taken during a shift, please refer to [Break Laws in California: Meal Breaks & Rest Periods Made Easy](#).

Employers are required to provide suitable resting areas for employees during working hours that are separate from the toilet room.³³ The resting facilities should also be available to employees during working hours. Additional guidance on seating requirements during rest breaks is not specified. However, employers should still provide suitable seats for employees to use during their rest breaks.

What Kind of Seating is “Suitable”?



No legal authorities have yet provided guidance on what defines the “suitable seating” referenced in the wage orders. What counts as suitable seating will likely depend on the workplace. Typically, a stool, a chair, or a bench that can support an average person will likely satisfy the seating requirement.

Penalties for Violating California's Suitable Seating Law



Employees generally have no private right of action to recover damages for violations of the wage orders' seating requirements. They can, however, pursue an action against their employer under California's Labor Code Private Attorneys General Act of 2004 (called "PAGA").³⁴

Under PAGA, an aggrieved employee can bring an action for civil penalties on behalf of the State of California for Labor Code violations committed against the employee and other employees.³⁵ For actions filed on or after June 19, 2024, the employee must have personally suffered each violation alleged and may pursue penalties only for coworkers who suffered violations of the same provisions.³⁶ Labor Code section 1198 gives the IWC's wage orders the force of law.³⁷ Thus, a violation of the wage orders' suitable seating requirements effectively violates the Labor Code.

If an employer fails to provide suitable seating as required by law, it is subject to a PAGA civil penalty in the following amounts:



Default Penalty. For most violations, the employer must pay \$100 for each aggrieved employee per pay period.³⁸



Higher Penalty. The penalty rises to \$200 for each aggrieved employee per pay period, but only where a court or the Labor and Workforce Development Agency found the same policy or practice unlawful within the previous five years, or the employer acted maliciously, fraudulently, or oppressively.³⁹

The 2024 amendments to PAGA also created penalty caps for employers that take reasonable steps to comply, along with cure procedures that can reduce or eliminate these penalties.⁴⁰

These civil penalties, however, are not entirely payable to the employees. In a PAGA action, 65% of the penalties go to the State of California (specifically, the Labor and Workforce Development Agency) and the remaining 35% goes to the aggrieved employees.⁴¹

To bring a PAGA action, the employee must first follow certain procedures, which are described in Labor Code sections 2698 through 2699.5 [↗](#).

It is usually a good idea to consult with an attorney before doing this, especially because PAGA allows employees to recover reasonable attorney fees and litigation costs in addition to any amounts to which they would otherwise be entitled.⁴² Many attorneys take these kinds of cases on a contingency basis, without any upfront fees.

References

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| 1 | Cal. Code of Regs., tit. 8, §§ 11010–11130, 11150, subd. 14(A). |
| 2 | Cal. Code of Regs., tit. 8, §§ 11010–11130, 11150, subd. 14(B). |
| 3 | Cal. Const., art. XIV, § 1; Labor Code, § 1173. |
| 4 | <i>Mendiola v. CPS Security Solutions, Inc.</i> (2015) 60 Cal.4th 833, 838. |
| 5 | <i>Martinez v. Combs</i> (2010) 49 Cal.4th 35, 57; Cal. Code of Regs., tit. 8, §§ 11000–11170. |
| 6 | IWC Wage Order No. 7–68, <i>Wages, Hours, and Working Conditions for Women and Minors in the Mercantile Industry</i> (Feb. 1, 1968) § 18, former Cal. Admin. Code, tit. 8, § 11215–18, subd. (a). |
| 7 | <i>Kilby v. CVS Pharmacy, Inc.</i> (2016) 63 Cal.4th 1, 13. |
| 8 | Cal. Code of Regs., tit. 8, §§ 11010, 11020, 11030, 11040, 11050, 11060, 11070, 11080, 11090, 11100, 11110, 11120, 11130, 11150. |
| 9 | Cal. Code of Regs., tit. 8, §§ 11140, 11160. |
| 10 | Cal. Code of Regs., tit. 8, § 11140, subd. 13. |
| 11 | Cal. Code of Regs., tit. 8, § 11160, subd. 12. |
| 12 | Cal. Code of Regs., tit. 8, § 11170. |
| 13 | Cal. Code of Regs., tit. 8, §§ 11010–11130, 11150, subd. 14. |
| 14 | <i>Kilby v. CVS Pharmacy, Inc.</i> (2016) 63 Cal.4th 1, 18. |
| 15 | <i>Kilby v. CVS Pharmacy, Inc.</i> (2016) 63 Cal.4th 1, 18 [“When evaluating whether the ‘nature of the work reasonably permits the use of seats,’ courts must examine subsets of an employee’s total tasks and duties by location, such as those performed at a cash register or a teller window, and consider whether it is feasible for an employee to perform each set of location-specific tasks while seated.”]. |
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- 16 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 18 [“Tasks performed with more frequency or for a longer duration would be more germane to the seating inquiry than tasks performed briefly or infrequently.”].
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- 17 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 18 [“Courts should look to the actual tasks performed, or reasonably expected to be performed, not to abstract characterizations, job titles, or descriptions that may or may not reflect the actual work performed.”].
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- 18 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 23 [the seating provision “requires a seat when the nature of the work reasonably permits it, not when the nature of the worker does”].
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- 19 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 20 [“Whether an employee is entitled to a seat under section 14(A) depends on the totality of the circumstances.”].
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- 20 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 19–20 [“Analysis begins with an examination of the relevant tasks, grouped by location, and whether the tasks can be performed while seated or require standing.”].
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- 21 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 20 [“This task-based assessment is also balanced against considerations of feasibility. Feasibility may include, for example, an assessment of whether providing a seat would unduly interfere with other standing tasks, whether the frequency of transition from sitting to standing may interfere with the work, or whether seated work would impact the quality and effectiveness of overall job performance.”].
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- 22 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 20–21 [“[T]he totality of the circumstances test simply recognizes that numerous factors . . . may play a role in the ultimate conclusion.”].
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- 23 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 21 [“The weight given to any relevant factor will depend upon the attendant circumstances.”].
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- 24 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 21.
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- 25 *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 21 [“An employee’s duty to provide a certain level of customer service should be assessed, along with other relevant tasks and obligations, in determining whether the nature of the work reasonably permits use of a seat at a particular location.”].
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26	<i>Kilby v. CVS Pharmacy, Inc.</i> (2016) 63 Cal.4th 1, 21 [“However, ‘business judgment’ in this sense does not encompass an employer’s mere preference that particular tasks be performed while standing. The standard is an objective one.”].
27	<i>Kilby v. CVS Pharmacy, Inc.</i> (2016) 63 Cal.4th 1, 18.
28	<i>Kilby v. CVS Pharmacy, Inc.</i> (2016) 63 Cal.4th 1, 18 [“[C]onsideration of all the actual tasks performed at a particular location would allow the court to consider the relationship between the standing and sitting tasks done there, the frequency and duration of those tasks with respect to each other, and whether sitting, or the frequency of transition between sitting and standing, would unreasonably interfere with other standing tasks or the quality and effectiveness of overall job performance.”].
29	Cal. Code of Regs., tit. 8, §§ 11010, 11020, 11030, 11040, 11050, 11060, 11070, 11080, 11090, 11100, 11110, 11120, 11130, 11150, subd. 14(B).
30	Cal. Code of Regs., tit. 8, §§ 11140, 11160.
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33	Cal. Code of Regs., tit. 8, §§ 11010, 11020, 11030, 11040, 11050, 11060, 11070, 11080, 11090, 11100, 11110, 11120, 11130, 11150, subd. 13(B).
34	Labor Code, §§ 2698–2699.5.
35	<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> (2014) 59 Cal.4th 348, 360. <i>Iskanian</i> ’s rule barring wholesale waiver of an employee’s right to bring a representative PAGA action survives, as modified by <i>Viking River Cruises, Inc. v. Moriana</i> (2022) 596 U.S. 639, which permits an employee’s individual PAGA claim to be compelled to arbitration.
36	Labor Code, § 2699, subds. (a), (c)(1), as amended by Stats. 2024 (AB 2288, SB 92).
37	Labor Code, § 1198.
38	Labor Code, § 2699, subd. (f)(2)(A).
39	Labor Code, § 2699, subd. (f)(2)(B).
40	Labor Code, § 2699, subds. (g), (h); Labor Code, § 2699.3, as amended by Stats. 2024 (AB 2288, SB 92).

41 Labor Code, § 2699, subd. (m). For PAGA actions based on a notice filed before June 19, 2024, the prior split applies: 75% to the state and 25% to the aggrieved employees.

42 Labor Code, § 2699, subd. (k)(1).
