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AND LAWNDALE NEWS

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Racing Past the Competition



Lawndale's Josh Velasco keeps pace in the boys' 1,600-meter run at last Saturday's South Bay Track and Field Championships. Velasco finished fourth in the race at 4:44.2. Photo by Joe Snyder

The Curious Case of Kilby v. CVS Pharmacy

By Rob McCarthy

The California Supreme Court stepped into a dispute between CVS and its cashiers and clerks over whether they should be allowed to sit at work, and the decision looks like a draw.

The state high court issued a ruling on April 4 in a case that hinged on two questions. Does a California wage rule dating back to 1919 for women in the mercantile industry also cover retail clerks and cashiers? If it does, should CVS be required to furnish the store with chairs for those times when employees may sit and work?

The case is curious because a reasonable person might assume that a "yes" to the first question would automatically answer the second one. However, it took a small army of attorneys for store cashiers, bank tellers, CVS Pharmacy and JPMorgan Chase Bank to argue for and against letting retail and bank employees to sit at work.

What the state Supreme Court decided was that in some instances, a clerk or teller should be allowed to sit. However, the decision of whether an employee sits or stands during a shift rests with the employer.

"If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for," the justices decided in Kilby v. CVS Pharmacy Inc. Because a similar case between Chase Bank and its tellers asked the same questions, the court combined them for judicial economy.

Chase and CVS employees asked federal courts to extend the identically worded wage orders, which state "all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." The California Supreme Court heard the consolidated case at the request of the U.S. Ninth Circuit Court of Appeals.

The state justices unanimously decided in favor of the CVS and Chase employees, that the labor regulation about sitting to work applies to both of their professionals. The court stopped short of saying that all tellers and store cashiers

must be provided a chair.

Both sides will claim victories in the decision, according to Los Angeles attorney Matthew Kaufman, who represents employees in civil disputes.

"The victory for the employees is they (justices) endorse this idea you have to look at all of the circumstances about whether an employee gets a seat," Kaufman said.

"I think it was in favor to the employers that the courts went to a middle ground ... accepting the totality of the circumstances test that looks at the expectations, the physical factors to decide whether a seat is needed."

A CVS spokesman told the Herald that the nation's second-largest drugstore chain is sticking by its interpretation of the law. The court's decision hasn't changed CVS management's mind.

"CVS Health's policies comply with the long-understood, reasonable interpretation of the law," said Mike DeAngelis, senior director of corporate communications for CVS. "The California Supreme Court's recent decision has not changed our interpretation of the law and there has been no change to our policies or practices at this time."

An email to JP Morgan Chase Bank's regional representative asking whether it had provided chairs to Chase Bank tellers since the state Supreme court ruling went unanswered.

L.A. labor attorney Kaufman said he expects retail stores and banks to challenge the state Supreme Court decision, and press their case all the way to the U.S. Supreme Court.

"They're not going to settle until the United States Supreme Court says so," he predicted. "You'd have to reconfigure every cash register in the state."

Justices left the decision to the employer on whether an employee's duties allow for sitting in a chair during a work shift. An employer's business judgment and the physical workplace are relevant, but limited under the new ruling. An employer must consider all of the employee's tasks and not decide based on a worker's characteristics, the court wrote.

Prolonged standing and sitting makes bank tellers prone to back problems, according to Social Security Disability Help, a non-governmental resource on the web.

The legal issues aside, the owner-operator of a physical-therapy and ergonomics practice in Los Angeles County said that standing eight hours a day contributes to circulatory problems of the legs. Being able to sit may help, but it can lead to tension and pain elsewhere, according to Tom Marshall of Hellerwork Structural Integration in Westlake Village.

"If your workstation has you slouching to reach a keyboard or to see a monitor that is too low these problems are compounded," he said. "When sitting the problems can be just as bad."

Banks and retail stores in the state must comply immediately with the wage order, Kaufman said. A state Supreme Court decision becomes law once the decision is handed down or overturned by a federal court, including the U.S. Supreme Court.

Kaufman, the Los Angeles attorney, sees numerous issues and details about the sitting order that weren't answered by the state Supreme Court. An employer's refusal to offer an employee a chair can't be judged as reasonable or unreasonable until a court issues a conclusive test, he said.

"It's not like a speeding ticket. The courts are going to have to come up with a rule of measurement," he said. "Even cash registers are different."

Maybe the only question settled by the state Supreme Court is the burden of proof. The retailer and banks have the legal responsibility to provide a chair to cashiers, clerks or bank tellers or show why they refused. The original class-action lawsuits by the CVS and Chase employees will move forward in the federal courts now that California jurists have clarified the wage law.

"The nature of the work aside, if an employer argues there is no suitable seat available, the burden is on the employer to prove unavailability," the justices admonished CVS and Chase Bank in their ruling. •

Weekend Forecast

Friday
Sunny
66°/55°



Saturday
Mostly Sunny
66°/55°



Sunday
Sunny
70°/51°



PETSPETS **Pets** PETSPETS

Purrrfect Companions



Khloe

Share springtime with a wonderful feline friend and adopt your purr-fect match.

Not ready to adopt, but need your "kitty fix"? Are you a person who loves animals? Kitten Rescue, one of the largest and oldest rescue groups in the Los Angeles area, is currently recruiting volunteers to foster kittens and cats that are rescued in the South Bay area. We currently have more kitties that we need to rescue than we have foster homes, and in order to save these babies we need new foster families. You don't need any special skills to be a foster parent, all you need is a loving heart and the commitment to help a kitten(s) or adult cat(s) until they get back on their feet and find a permanent loving forever home. Being a foster parent is a very rewarding experience! Kitten Rescue offers free foster training and once you are through training we will support you with expertise, vets, and adoption venues. We also post foster kitties ready for adoption on our website. You can find out more about Kitten Rescue at our website: www.kittenrescue.org

Khloe is a beautiful, sweet girl with a gentle soul and expressive face. She lived with a family who found her and took her as a kitten, but they never really considered her their cat and never had the time to get her fixed. Since they let her roam around outside unfixed, she got pregnant and had 5 beautiful baby kittens. It was too much for her humans to handle, so they requested help from Kitten Rescue and we took the feline family in. Khloe has been an excellent mama cat, taking wonderful care of her babies. She is very trusting of humans and loves to be around people, especially children. Khloe is one of the gentlest and loving cats you'll ever meet, and she very much wants to have a home of her own where she will be cared for and loved and given the attention she deserves and craves. She gets along with other cats after a brief introduction and would love to

be adopted along with one of her babies, but can also be happy as an only cat.

Shorty has a special move where he will just flop down on the floor when you're about to pick him up. He'll roll over for some belly rubs and once you pick him up he'll let you carry him like a baby. He is a playful and sweet cat who will come greet you at the door when you come home. Shorty loves to carry little stuffed animals around in his mouth and chase toys that you throw across the floor. He loves his brother Stumper and would like to find a home together with him. Shorty was born to a stray cat and taken into a foster home as a kitten together with his brother, after their sister had unfortunately gotten hit by a car. He loves the cozy indoor life and all the comforts it provides.

Phoenix is a handsome short hair white and orange tabby who was rescued in Istanbul, Turkey. He has a wonderful personality and is playful, loving, affectionate, easy-going and super-sweet. Phoenix loves being petted and purrs loudly when you pet him. He loves giving his humans hugs and kisses and taking naps on their laps. He is good both with boy kitties and girl kitties and enjoys grooming, snuggling with them, and fun playing with his kitty friends and toys. Phoenix is special and endearing and is ready to give you lots of affection and entertain you with his playful tricks.

Ziggy is a sweet little girl currently being fostered with her sister, Bowie. Ziggy loves to be held and cuddled, and needs a little help at first getting comfortable and relaxed with humans. Once Ziggy gets to know you, she is affectionate and playful. She would do great with another kitty, or can be adopted with her sister, Bowie. Ziggy loves belly rubs, and purrs loudly when you pet her.

Bowie is a little black and white tuxie girl.



Phoenix



Ziggy

She would make a great companion to another kitty. Bowie and be a bit timid at first, but once you start petting her, she loves to roll over in your lap and let you rub her tummy. She loves sitting next to you and taking a nap in your arms. Bowie is one of the most mellow and gentle kitten you'll ever know. She just needs someone to teach her how to play, so she can be a little more energetic. Right now, Bowie just loves cuddling up in a little ball and staying put, but she's happier when humans and other kitties are around!

Rosie is learning to be playful and learning to trust people again. She is friendly, but shy. Rosie was rescued off the streets, after being thrown out, and had to fight to stay alive by hiding and dodging traffic, dogs, etc. She wants to trust people again, and will warm up and become a loving kitty for the right gentle and patient family. Please give sweet little Rosie girl a chance. She promises to relax and trust her new humans right away!



Rosie

These kitties are available for adoption through Kitten Rescue, one of the largest cat rescue groups in Southern California. All of our kitties are spayed/neutered, microchipped, tested for FeLV and FIV, dewormed and current on their vaccinations. For additional information and to see these or our other kittens and cats, please check our website www.kittenrescue.org or email us at mail@kittenrescue.org. Your tax deductible donations for the rescue and care of our cats and kittens can be made through our website or by sending a check payable to Kitten Rescue, 914 Westwood Blvd. #583, Los Angeles, CA 90024.

On Saturdays, we have adoptions from noon to 3:30 p.m. in Westchester at 8655 Lincoln Blvd. just south of Manchester Ave. and also in Mar Vista at 3860 Centinela Ave, just south of Venice Boulevard. Our website lists additional adoption sites and directions to each location. •



Bowie



Shorty

THE YELLOW DOG PROJECT.com

If you see a dog with a **YELLOW RIBBON** or something yellow on the leash, **this is a dog who needs some space.** Please do not approach this dog with your dog. Please maintain distance or give this dog and his/her person time to move out of your way.



There are many reasons why a dog may need space:
 HEALTH ISSUES
 IN TRAINING
 BEING REHABILITATED
 SCARED OR REACTIVE AROUND OTHER DOGS

THANK YOU!
 Those of us who own these dogs appreciate your help and respect!
 illustrated by Lili Chin www.doggiedrawings.net