



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

February 12, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Alex Vuong v. Nordstrom, Inc.*

Dear PAGA Administrator:

This office represents Alex Vuong in connection with his claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Mr. Vuong was an employee of NORDSTROM, INC. ("NORDSTROM").

The employer may be contacted directly at the address below:

NORDSTROM, INC.
1617 SIXTH AVENUE
SEATTLE, WA 98101

Mr. Vuong intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Vuong seeks relief on behalf of himself, the State of California, and other persons who are or were employed by NORDSTROM as a non-exempt employee in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

NORDSTROM employed Mr. Vuong as a non-exempt employee from approximately November 2023 to August 2024. Mr. Vuong worked for NORDSTROM as a Service Experience Representative at its Nordstrom Rack retail store in San Leandro, California. Mr. Vuong typically worked six (6) or more hours per day and four (4) or more days per week. Mr. Vuong's job duties included, without limitation, operating the cash register, handling customer transactions, and providing customer service.

NORDSTROM committed each of the following Labor Code violations against Mr. Vuong, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1).¹ Mr. Vuong’s relevant claims are as follows:

NORDSTROM’s Company-Wide and Uniform HR Practices

NORDSTROM, INC. is a Washington corporation that operates a luxury department store chain with approximately 79 retail store locations in California. Upon information and belief, NORDSTROM maintains a centralized Human Resources (HR) department at its corporate headquarters in Seattle, Washington, for all non-exempt employees working for NORDSTROM at retail stores in California, including Mr. Vuong and other aggrieved employees. NORDSTROM maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Mr. Vuong and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Industrial Welfare Commission (“IWC”) Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. 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.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

NORDSTROM’s California retail stores are generally similar in their layout and design and there was, and continues to be, space at cash wraps to allow for the presence and use of a seat or stool by

¹ These facts, theories, and claims are based on Mr. Vuong’s experience and counsel’s review of those records currently available relating to Mr. Vuong’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Vuong reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

Mr. Vuong and other aggrieved employees during the performance of their work duties. NORDSTROM could have provided Mr. Vuong and other aggrieved employees with a suitable seat at cash wraps, with reasonable or no modification to these work areas, but instead denied and continues to deny them seats altogether or denies them suitable seats. As a result, Mr. Vuong and other aggrieved employees are and have been forced to stand throughout the day. In addition, NORDSTROM failed to expressly advise Mr. Vuong and other aggrieved employees that they could utilize seats while performing their duties.

During his employment, Mr. Vuong performed cashiering duties at the cash wrap and spent a significant portion of his day behind the cash wrap. Other aggrieved employees similarly spent a portion of their day at cash wraps performing cash register duties. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. Mr. Vuong and other aggrieved employees could have handled cash register transactions and performed other similar tasks at cash wraps at any of NORDSTROM's retail stores while seated without interference with their ability to perform their job duties. However, as set forth herein, NORDSTROM systematically, and on a company-wide basis, does not provide seats or does not provide suitable seats at cash wraps and expressly prohibits employees from sitting while working, forcing Mr. Vuong and other aggrieved employees to stand throughout their work shifts.

NORDSTROM violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Vuong and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. NORDSTROM's management did not inform Mr. Vuong and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of NORDSTROM's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Vuong and other aggrieved employees were forced to stand during shifts and denied seats. NORDSTROM's failure to provide suitable seating to Mr. Vuong and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Mr. Vuong and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NORDSTROM into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen 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.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

As stated, NORDSTROM’s California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Vuong and other aggrieved employees during lulls in operations. For example, Mr. Vuong experienced lulls in his work at various times during a typical shift, especially when the store was not busy. During these lulls, when Mr. Vuong was not actively performing tasks that require standing, Mr. Vuong could have taken a moment to sit and rest his legs, back, and feet if seating was provided. NORDSTROM could provide Mr. Vuong and other aggrieved employees with a suitable seat or stool in its work areas but instead denies employees seating and forces Mr. Vuong and other aggrieved employees to stand throughout the day.

NORDSTROM did not provide Mr. Vuong and other aggrieved employees with suitable seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Vuong and other aggrieved employees engaged in duties in which the nature of the work required standing, NORDSTROM denied them the use of seats nearby during lulls in their work duties. Moreover, NORDSTROM did not inform Mr. Vuong and other aggrieved employees of their rights to a seat or stool under California law.

As a result of NORDSTROM’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide suitable seats in reasonable proximity to their work areas, Mr. Vuong and other aggrieved employees were forced to stand during shifts and denied seats. NORDSTROM’s failure to provide suitable seating to Mr. Vuong and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Vuong and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring NORDSTROM into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Mr. Vuong, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against NORDSTROM for violations of California Labor Code section 1198 and the applicable IWC Wage Order.

Therefore, on behalf of all aggrieved employees, Mr. Vuong seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is positioned above the printed name.

Ninel Kocharyan

Copy: NORDSTROM, INC. (via U.S. Certified Mail)

CAPSTONE LAW, APC
1875 Century Park East
Suite #1000
Los Angeles, CA 90067

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