

LABOR UPDATE: CALIFORNIA SUPREME COURT SIDES WITH EMPLOYERS, CONFIRMS MUCH-NEEDED FLEXIBILITY ON MEAL AND REST BREAK OBLIGATIONS

by Travis Gemoets, April 18, 2012

For over a decade, class action litigation over missed meal and rest periods, off-the-clock work, and failure to pay wages have plagued California employers and resulted in over a billion dollars paid in verdicts and settlements. In last week's *Brinker Restaurant Corporation v. Superior Court*, the California Supreme Court resolved a significant issue, finding that an employer must only provide meal periods to its employees, leaving the employees free to use the period for whatever purpose they desire, but that an employer need not ensure no work is done. This ruling allows California employers—finally—to breathe a huge sigh of relief.

MEAL PERIODS

Meal periods. The Court makes clear the following: "When someone is ... employed ... for five hours, an employer is put to a choice: it must (1) afford an off duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay." *Brinker*, p. 35.

The Court continues: "[a]n employer's duty with respect to meal breaks ... is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over

their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." *Brinker*, Slip Opinion, p. 36 (emphasis added). The Court further acknowledged that what will suffice may vary from industry to industry, but held, "the employer is not obligated to police meal breaks and ensure no work thereafter is performed. Bona fide relief from duty and the relinquishing of control satisfies the employer's obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations and create liability for premium pay." *Brinker*, p. 36-7 (emphasis added).

On the related question concerning when meal periods must be provided, the Court concluded a first meal break must fall no later than five hours into an employee's shift, but an employer need not schedule meal breaks at five hour intervals throughout the shift: "We conclude that Wage Order No. 5 imposes no meal timing requirements beyond those in section 512. Under the wage order, as under the statute, an employer's obligation is to provide a first meal period after no more than five hours of work and a second meal period after no more than 10 hours of work." *Brinker*, p. 50. The Court also noted that employees who work between 5 and 6 hours in a shift can waive their meal period, and employees who work between 10 and 12 hours can waive their second meal period.

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REST PERIODS

Rest periods. On the question of rest periods, the Court confirmed that the wage orders entitle employees to 10 minutes of paid rest for shifts from three and one-half to six hours in length, and to another 10 minutes paid rest for shifts from six hours to 10 hours in length. The Court clarified that rest periods need not be timed to fall specifically before or after any meal period.

CLASS CERTIFICATION VIABILITY AFTER BRINKER?

With respect to rest period claims, the Court concluded that plaintiffs had identified a theory of recovery suitable for class treatment, namely, that *Brinker's* policy did not comply with the law.

As for meal period claims, the Supreme Court remanded to the trial court for reconsideration of class certification in light of its clarification of the substantive law governing meal period claims.

Finally, with respect to a third issue—for claims that *Brinker* required off-the-clock work—the court affirmed vacation of class certification, finding that individualized issues predominate in such claims.

PRACTICAL POINTERS.

Practical Pointers. Although the employer before the *Brinker* court was subject to Wage

Order 5, the Court's ruling will apply to industries covered by other Wage Orders. Accordingly, unless otherwise mandated by a collective bargaining agreement or employment contract, employers who automatically pay employees an hour's pay whenever they fail to clock out for a full 30-minute meal period can safely cease this practice once a clear written policy, compliant with *Brinker*, is implemented, along with policies allowing an employee denied a meal period under the *Brinker* standard to receive an extra hour's pay.

Employers who allow a meal period on "rolling five hour" periods can discontinue such practice, provided their meal period policy is *Brinker*-compliant. Employers whose meal and/or rest period policies fail to account for the *Brinker* formulations should immediately revise their policies accordingly with the assistance of experienced employment counsel.

Finally, for those employers who are currently facing a lawsuit with a certified class of employees, consideration should be made to determine if a motion for decertification, in light of *Brinker*, is warranted.

[Case: *Brinker Restaurant Corporation v. Superior Court*. No. S166350](#)



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