



California Supreme Court Issues *Brinker* Decision, Providing Much-Anticipated Guidance on Meal and Rest Period Requirements

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The California Supreme Court issued its long-awaited decision in *Brinker Restaurant Corporation v. Superior Court*, clarifying the obligations of employers concerning the provision and timing of meal and rest periods. The decision provides employers welcome relief from interpretations of California's Labor Code and the Industrial Welfare Commission Wage Orders which would have made employers strictly liable for employee missed meal periods and which would have increased the likelihood of employee class action lawsuits. However, the Court's decision also indicates that employee wage and hour claims remain suitable to class action treatment and, in doing so, provides specific guidance to plaintiffs' attorneys on how to maintain such claims in the future.

The decision arises from claims brought on behalf of an estimated 60,000 nonexempt employees of defendants Brinker Restaurant Corporation, *et al.*, which own and operate restaurants throughout California, including *Chili's Bar and Grill Restaurants* and *Maggiano's Little Italy*. The Supreme Court granted review "to resolve uncertainties in the handling of wage and hour class certification motions" which affect all employers. Among the Court's most important holdings are:

Employers must only "provide" meal periods; not "ensure" that they are taken. Debate existed as to whether employers may simply "provide" employees the opportunity to take duty-free meal periods or whether employers must strictly police meal periods to "ensure" that employees take full 30-minute breaks in order for the employer to avoid liability for premium pay to the employee. The Court determined that under Labor Code section 512 and the Wage Orders generally, an employer's obligation is "to relieve its employee of all duty, with the employee thereafter at liberty to use the meal period for whatever purpose he or she desires, but the employer need not ensure that no work is done." An employer can satisfy its duty to provide meal periods by relieving employees of all duty and permitting the employee with a reasonable opportunity to take at least 30 minutes of unin-

terrupted break, relinquishing all control over the employee's activities during the break and not impeding or discouraging the employee from taking a break.

Meal periods are not required to be provided every five hours. The *Brinker* plaintiffs advocated an interpretation of the Wage Orders which would have required an employer to provide a second meal period no later than five hours after the end of a first meal period (i.e., a "rolling-five" meal period requirement). This timing interpretation would increase the likelihood of timing violations leading to premium pay liability and would potentially increase the number of meal periods to which employees could be entitled. The Court disagreed, finding that, absent waiver, Section 512 and current Wage Orders require a first meal period no later than the end of an employee's 5th hour of work, and a second meal period no later than the end of an employee's 10th hour of work. No additional timing requirements are imposed.

After the initial rest period, the rate at which employers must authorize and permit rest periods is ten minutes net rest time per every four hours or major fraction thereof. The Court resolved confusion over the number of rest periods that an employer must permit through a work period. Under the applicable Wage Order, the Court made clear, "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."

The Wage Order does not require an employer to provide a rest period before any meal period. The *Brinker* plaintiffs advocated a rigid interpretation of the timing of rest periods that would have reduced employer and employee flexibility. The Court instead held that aside from the requirement in the Wage Order that rest periods "insofar as practicable shall be in the middle of each work period," no timing requirements mandate that employees be provided a rest period before a meal period. "Employers are thus subject to a duty to make a good faith effort to authorize and permit rest

breaks in the middle of each work period, but may deviate from that preferred course where practical considerations render it infeasible."

Class Action Implications

The decision also clarifies important principles governing class actions. Among them is that, in deciding whether to certify a class, trial courts are not obligated to resolve threshold disputes over the elements of a plaintiff's claims unless a particular determination is necessarily dispositive of the certification question. This has the effect of limiting an employer's ability to terminate a class action early in the life of the lawsuit. Class actions will continue to be highly contested in trial courts through class certification proceedings, and the expense of these proceedings will continue to impose significant leverage on employers to settle claims.

Going Forward

Although the *Brinker* decision provides much needed clarification of employer obligations, employers will continue to be liable for premium wage payments for missed meal and rest periods if the employer cannot demonstrate that it properly provided these breaks to employees. Thus, employers should evaluate their practices and policies in light of the *Brinker* decision and establish practices that will limit their risk of individual and class claims. In particular, because of the threat of meal and rest period claims, many employers issued conservative policies that now provide greater protections than what is required under the Labor Code and Wage Orders as interpreted in *Brinker*. Those employers may wish to evaluate and reform their policies to provide greater flexibility for themselves and their employees and to ensure that supervisors do not discourage employees from taking required meal periods and breaks. CC

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