Brinker Decision: "Provide" Does Not Mean "Ensure" Re: Meal and Rest Periods for Non-Exempt Employees in CA

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Brinker v. Superior Court of San Diego County
No. D049331
California Supreme Court, April 12, 2012

On Thursday, the California Supreme Court issued its long awaited decision in Brinker Restaurant Corp. v. Superior Court, No. D049331 (April 12, 2012). This unanimous decision brings some clarity to the stringent meal period and rest period requirements for non-exempt employees in California.

Meal Periods

Employers are not obligated to police meal periods. Instead, employers are required to 1) relieve employee of all duties, 2) relinquish control over employee's activities and 3) permit employee a reasonable opportunity to take an uninterrupted thirty-minute break. The California Supreme Court concluded that an employer's obligation is to relieve its employee of all duties, but the employer does not need to ensure that no work is done. The employee is free to use the meal period for any purpose. If an employee decides to cut short a meal period, or not take one at all, an employer does not owe a penalty. However, an employee is entitled to be paid for the time worked during the meal period, but no premium pay is required. Employers may not pressure employees to skip a meal period and may not offer any incentives for employees to skip a meal period.

Timing of Meal Periods

There is no penalty if an employee works five consecutive hours without a meal period. The rule for the timing of meal periods remains the same. Employees are due a first meal period after no more than five hours of work and a second meal period after no more than ten hours of work. Thus, a meal period is required no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee's tenth hour of work. Employees who work over five hours, but no more than six hours are provided a meal period, unless waived in writing. Employees who work more than ten hours are entitled to a second meal period, but it can be waived if the employee works no more than twelve hours. The California Supreme Court rejected a rolling timing requirement, therefore, a second meal period does not need to be five hours after the first meal period.

Rest Periods

The rule for rest breaks remains the same. Employers must provide ten minute rest periods per four hours or major fraction thereof worked. Employees who work less than three and one-half hours are not entitled to a rest period. Employers have a duty to make a good faith effort to authorize and permit rest breaks in the middle of each work period, but may deviate where practical considerations render it infeasible. The California Supreme Court rejected a strict rule that a rest break occur before a meal break.

Class Actions

There will still be wage and hour class actions. In some ways, the California Supreme Court lowered the bar on the procedural requirements for getting a class certified. The California Supreme Court concluded that the trial court properly certified a rest break subclass, remanded the meal break subclass certification to the trial court for reconsideration and declined to certify the "off-the-clock" subclass.

Recommendations

In light of the Brinker decision, employers should review their employment policies to ensure that they comply with the stringent California wage and hour requirements related to meal periods and rest periods. Employers should determine which policies need to be changed as a result of this decision and train managers and payroll staff on the new policies. Further, inform employees of the meal period and rest period policies, and maintain accurate records of breaks, hours worked and payroll records.

For the complete decision see:

HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/S166350.DOC

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