



LEGAL ALERT

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***Brinker Gives Employers a Break
but Not a Free Ride***

by Brian J. Mills

The California Supreme Court issued a unanimous decision in *Brinker Restaurant Corporation v. Superior Court*, Case No. S166350 finding that employers are not obligated to ensure their employees are taking meal periods and rest breaks.

The California Supreme Court clarified previous murky and conflicting opinions regarding meal period and rest break entitlement for employees and provided much needed guidance to employers.

Meal Periods

The Court determined the employer's obligation to "provide" a meal period is satisfied if the employer "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." Specifically, the Court held that employers are not obligated to "police meal breaks". Employees are then free to do anything

they choose during their meal period including work. If the employer knows or reasonably should have known that employees are working during meal periods, then they must pay for that time.

The Court also determined that the first meal break must occur no later than the end of an employee's fifth (5th) hour worked, and a second meal break no later than the end of an employee's tenth (10th) hour worked.

The Court rejected the "rolling" five hour meal period argument, whereby an employee would be entitled to a meal period for each five hour working period without regard to how many total hours the employee works.

Rest Breaks

Employers must authorize and permit rest breaks at the rate of ten (10) minutes per four (4) hours worked or major fraction thereof. Prior to this ruling, there was a dispute as to whether a "major fraction" meant over two hours or three and one-half hours. The Court interpreted "major fraction" using the legal, mathematical and linguistic definition to be over two hours. Thus, "[e]mployees 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 Court also determined that meal periods and rest breaks do not necessarily need to be taken in a particular order. Thus, a meal period could occur before the first rest period. The Court however noted that generally for an eight hour shift, a rest break should occur before and after a meal period, unless other factors make it impracticable to do so.

Class Certification

The Court ruled that uniform company procedures and policies regarding meal periods and rest breaks, which are alleged to be in violation of the law, can make a case suitable for class certification, without regard as to whether individual employees were even

damaged by the policy. Thus, a previous hurdle to class certification in meal period and rest break cases has now been lowered significantly.

Potential Actions for Employers

First, current meal period and rest break policies may need to be revised in light of the now clarified rules from *Brinker*. Many company policies do not comply with these rules.

Second, training supervisors on the revised policies may be appropriate.

Third, enforcement of meal periods and rest break policies may be necessary along with discipline for employees and supervisors who violate these policies.

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