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California Supreme Court Clarifies Meal and Rest Period Law in Long-Awaited *Brinker* Decision

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By Michael S. Kun

After much delay, the California Supreme Court has finally issued its long-awaited decision in *Brinker Restaurant Group, Inc. v. Superior Court*, clarifying employers' obligations with regard to meal and rest period requirements. It is largely, but not entirely, a victory for employers. A copy of the decision is available here.

The Court confirmed that rest periods need only be made available to employees, and that there is no violation of law if an employee *chooses* not to take a rest period. Nevertheless, the Court affirmed the certification of a rest period class, holding that the lower court had not abused its discretion in certifying a class on such a claim because Brinker's uniform written policy may not comply with the law in practice as to the second rest period in a day. In so doing, the Court clarified when employees are entitled to rest periods: "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."

On meal periods, the Court rejected the arguments made by the plaintiffs that employers have an obligation to "ensure" that employees take 30-minute, uninterrupted meal periods. The Court concluded that employers, in fact, have no obligation to "ensure" that employees do no work, and it further explained that employers have no obligation to "police" employees' meal periods:

> An employer's duty with respect to meal breaks under both section 512, subdivision (a) and Wage Order No. 5 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…. On the other hand, 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 under Wage Order No. 5, subdivision 11(B) and Labor Code section 226.7, subdivision (b).

Importantly for employers, not only did the Court hold that employers need not "ensure" that meal periods are taken, but the Court also rejected the plaintiffs' argument in favor of "rolling" meal periods (i.e., the argument that an employee who takes an early meal period is entitled to another meal period within the next five hours, even if he or she works less than 10 hours). The Court explained, "We conclude that, absent waiver, section 512 requires a first meal period 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 10th hour of work." Thus, an employee who works an eight-hour shift and takes a meal period after working two hours would not be entitled to a second meal period during that shift.

Unfortunately, confirming that meal period claims will continue to be litigated in California for years to come, the Court added the following caveat to its ruling: "What will suffice may vary from industry to industry, and we cannot in the context of this class certification proceeding delineate the full range of approaches that in each instance might be sufficient to satisfy the law." That language would appear to invite litigation over whether an employer's meal period practices suffice in a particular industry.

What Employers Should Do Now

While *Brinker* is largely a victory for employers, it is by no means the end to meal and rest period litigation that employers had hoped for.

In affirming the certification of a class on the rest period claim based solely on the employer's uniform policy, the Court has ensured that plaintiffs and their counsel will continue to bring such claims where, as in *Brinker,* a policy could be read to deprive employees of rest periods or not notify them when they are available. To avoid such claims or defend against them, employers should:

- review their rest period policies promptly to ensure that they provide that 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"; and

- when making any changes to a policy, however, be careful to avoid an admission that their prior policies or practices were not compliant with the law.

As for meal period claims, while *Brinker* will certainly make it more difficult for employees to prevail on claims that they were denied meal periods, it does not foreclose those claims. Indeed, the Court's statement that "[w]hat will suffice will vary from industry to industry" seems to encourage further litigation with claims that the steps taken by a particular employer were not enough within that industry or within the employer's particular work environment. Accordingly, employers should:

- review their meal period policies to confirm that they make meal periods available at the proper times; and

- just as importantly, review their practices to confirm that employees are not prevented from taking meal periods and that they are paid meal period premiums when that occurs.

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For more information about this Advisory, please contact:

Michael S. Kun
Los Angeles
(310) 557-9501
mkun@ebglaw.com

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