



CALIFORNIA SUPREME COURT'S LONG-AWAITED DECISION ON MEAL PERIODS & REST BREAKS

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On April 12, 2012, the California Supreme Court decided *Brinker Restaurant Corporation v. Superior Court of San Diego (Hohnbaum)*, the seminal case on meal periods and rest breaks for non-exempt employees in California. While leaving intact the ability of employees to file class actions or individual actions against employers that fail to provide meal or rest breaks, the Court generally sided with employers in clarifying the scope of the employer's legal obligations.

The allegations in the underlying case were as follows: Plaintiffs claimed that Brinker used an improper system of "early lunching" – requiring its restaurant employees to take their first meal period shortly after their shifts began, then requiring employees to work an additional five to nine hours without a second meal period. Plaintiffs argued that employers have an affirmative duty to ensure that employees receive meal periods, and that Brinker could not meet this obligation simply by making meal periods available at the mid-point of their shift. Under California law, the employer is liable for one hour of penalty wages for each missed meal break.

The Employer's Duty to Make Meal Periods Available

The Court ruled that the employer's obligation is to relieve its employee of all duties, with the employee thereafter at liberty to use the meal period for whatever purpose he or she desires, but the employee need not ensure that no work is done.

It seems the Court is aware of the potential for abuse on both sides, inherent in permitting employees to work through their meal periods if they so choose, as the Court went on to state:

Proof an employer had knowledge of employees working through meal periods will not alone subject the employer to liability for premium pay; employees cannot use the flexibility granted them by employers to use their breaks as they see fit to generate such liability. On the other hand, an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.

Timing of Meal Periods

Labor Code section 512(a) provides that a California employer has a duty to make a first 30-minute meal period available to an hourly employee who is permitted to work more than 5 hours per day unless, (1) the total work period per day is 6 hours or less and (2) both the employer and the employee agree by mutual consent that the employee waives the meal period. Section 512(a) also states that an employer must make a second 30-minute meal period available to an hourly employee who works more than 10 hours per day, unless (1) the total hours worked per day is 12 or less, and (2) the first meal period was not waived.

The Brinker Court held that the first meal period must be provided no later than the end of the fifth hour worked, and the second meal period no later than the end of the tenth hour worked, but that there are no other timing requirements placed on meal periods. Thus the employer's "early lunching" requirement was not on its face prohibited.

Rest Breaks

The applicable wage order, IWC Wage Order 5-2001, which applies to the public housekeeping industry, and the applicable Regulation 11050(12)(A) states that an employer must permit a 10-minute rest period "per four hours of time worked or major fraction thereof." The Court held that an hourly employee is entitled to a

10-minute rest break for each major fraction of a 4-hour period. It further clarified that 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 from that preferred course where practical considerations render it infeasible. As a general rule, in an 8-hour workday, one rest break should fall on either side of the meal period, but shorter or longer shifts and other factors that render such scheduling impracticable may alter this rule.

Best Practices Following Brinker

Employers should remember that the burden of proving that meal and rest breaks were provided remains on the employer. Accordingly, clearly articulated policies, time records and procedures demonstrating that meal and rest breaks were provided remain essential “best practices” for employers.

For more information, please contact any member of Berliner Cohen’s Employment Law Group.

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