



California Employment Law Alert

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April 2012

California Employers Receive Long Overdue Clarification Of Their Obligations Regarding Meal And Rest Breaks

After almost four years, California's Supreme Court rendered its much anticipated decision in the case entitled *Brinker Restaurant Corp. v. Superior Court*. Simply put, this decision brings some clarity to the infamous debate regarding whether employers must ensure employees take their meal breaks, or instead, simply provide a meal break. The Court held: 1) the meal period standard obligates an employer to relieve employees of all duty during their meal periods leaving the employees to use their break for whatever purpose they desire; 2) there is no "rolling five" requirement with respect to the timing of meal periods; and 3) a shift over two hours long amounts to a "major fraction" of a four hour shift in the context of rest breaks. The Court also addressed class certification issues for alleged wage and hour violations.

Meal Breaks – Employers' Obligations

One of the primary issues in *Brinker* was whether California's Wage Orders and Labor Code require employers to ensure that employees perform no work during their meal period. The Court rejected this position finding that an employer need only provide meal breaks to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities, and permits them an opportunity to take an uninterrupted thirty minute break without impeding or discouraging them from doing so. The employer is not compelled to "police" meal breaks or ensure no work is performed during it. Thus, once an employer's obligation to provide a meal break is triggered, i.e. the employee works five hours, the employer is left with one of three choices: 1) provide the off-duty meal break in accordance with the *Brinker* standard; 2) obtain a mutually agreeable meal break waiver only if the employee's shift will conclude on or before the sixth hour; or 3) enter into a mutually agreeable on-duty meal break agreement only if the circumstances permit; that is, the nature of the job prevents an off-duty meal period.

The Court also addressed the payment/compensation owed to an employee who performs any work during a meal period. If an employer relinquishes control during a meal period and knows or should know that an employee continues to work through their break, the employer must compensate this employee for the work performed during the break. The Court opined that in this situation, an employer does not violate its meal break obligations and does not owe premium pay (one hour of wages).

Timing of Meal Breaks

The Court also considered the required timing of meal breaks and the so-called "rolling five" issue asserted by the plaintiffs – that a violation occurs if more than five consecutive hours of work occur without a meal break. The defendant employer in *Brinker* had its employees take an early meal break, often one or two hours into a shift, as opposed to the middle of their shift. Employers justify such policy on the habits and practices of its customers to ensure adequate staffing during the companies' busiest hours. In response to such a policy, the plaintiffs in *Brinker* asserted that the employer was obligated to provide another meal period no later than five hours after an employee's resumption of work and since they often worked for six, seven, or even eight hours after the last meal break, the defendant violated California's meal break laws. After analyzing the language and history of the IWC Wage Orders, the Court found no intent to require employers to provide employees a second meal period no more than five hours after their first meal period. Thus, employers properly time meal breaks by providing the first break no later than the end of the fifth hour of work, and the second break no later than the end of the tenth hour of work.

Timing of Rest Breaks

Another issue presented to the Court related to the frequency with which employers must authorize and permit rest breaks to their employees. Under most California Wage Orders, employers shall “authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours.” The Court analyzed the term “major fraction thereof” used in the Wage Orders holding that a “major fraction” of a four hour shift is anything more than two hours over and above the prior four hour work period. Taking into consideration the Wage Order’s provision that a rest break need not be authorized unless an employee works a shift of at least three and one-half hours, the Court held that employees are entitled to a ten minute rest break for a shift from 3.5 to 6.0 hours in length, two ten minute rest breaks for a shift of more than 6.0 and up to 10.0 hours, and three ten minute rest breaks for a shift of more than 10.0 hours and up to 14.0 hours.

With respect to the timing of rest breaks, employers must make a good faith effort to authorize and permit rest breaks in the middle of each work period but need not deviate from the employers’ preferred schedule where practical considerations render it infeasible. Employers should strive to authorize rest periods in the middle of each work shift, but an employer need not authorize and permit a rest break before a meal break. To provide additional guidance, the Court explained that as a general rule in an eight hour shift, rest periods should fall on either side of the meal period and an employer should avoid placing both rest breaks before the meal period.

Class Certification – Denial May Be Appropriate for Employers With Policies and Practices that Comply With California Law

Also before the Court in *Brinker* were three class certification issues relating to the rest break, meal break, and off-the-clock subclasses. Though employers were hoping for a black letter ruling that meal and rest breaks are not amenable to class treatment, the Supreme Court did not go so far. Instead, the Court seemed focused on whether the employer implemented and maintained express, written policies in compliance with California law and whether the company acted in accordance with such policies. With respect to the certified off-the-clock claim, the Court opined that this class should not have been certified because the employer maintained a formal policy disavowing off-the-clock work. Since there was no evidence of a systematic company policy to pressure or require employees to work off the clock, there was no common method of proof to support certification.

As to the rest break class, the Court found that it was error to reverse certification of the rest break claim since, on the facts presented to the Court, the employer’s standard policy violated California law because the policy did not authorize and permit a second rest break for shifts that were greater than six hours but less than eight hours. Finally and regarding the meal period class, the Court remanded the certification issue to the trial court since its decision was based on the erroneous presumption that the employer was required to provide a meal period for every rolling five hours of work.

The Implications Of *Brinker* And What Employers Should Do Now

While the *Brinker* decision is good news for California employers, they still face the practical reality of making sure their policies, procedures and practices are in compliance. As a result, it is recommended that employers commence with the following:

- Review your written meal period policy and practices to ensure that absent a lawful meal break waiver or on-duty meal break agreement, an employee receives an unpaid thirty minute meal break no later than the end of the fifth hour of work and the second unpaid break no later than the end of the tenth hour of work. Your policy and practices should emphasize that during meal breaks, the employee is relieved of all duty, you relinquish control over their activities and permit them to take an uninterrupted thirty minute break, and you do not impede or discourage them from taking such a break.

- Do not pressure employees to perform their job responsibilities during their meal breaks. Allow employees the freedom to leave the premises and the liberty to choose what they do during their meal period.
- Implement an off-the-clock policy that expressly prohibits employees from working while they are not clocked in. Encourage reports of off-the-clock work and investigate any employee complaints about your failure to pay for all hours worked, including work performed during meal breaks.
- If you learn that an employee is working during a meal break, you are likely obligated to pay her wages, including overtime wages if this work time exceeds daily and/or weekly overtime obligations. If an employee is not provided a meal break, is not relieved of all duty, or is discouraged from taking a meal break, the employee is entitled to one hour of premium pay.
- Ensure a compliant, written rest break policy that authorizes and permits employees to a ten minute rest break for a shift from 3.5 to 6.0 hours in length, two ten minute rest breaks for a shift of more than 6.0 and up to 10.0 hours, and three ten minute rest breaks for a shift of more than 10.0 hours and up to 14.0 hours.
- Train your managers and supervisors on California's meal and rest break law, in addition to your prohibition against working off-the-clock. Managers who are found to inhibit or discourage employees from taking breaks or allow them to work off-the-clock should be disciplined in accordance with your policies.

The preceding is a brief summary of some of the many issues addressed in *Brinker*. For specific questions regarding meal breaks, rest breaks, and off-the-clock work, we recommend that you contact an employment attorney. We also suggest that all employers conduct a thorough audit of their employee handbook and/or policies and procedures on these issues. Burnham Brown's employment attorneys are able to discuss these issues, in addition to providing assistance in re-drafting and implementing sound employment policies and procedures.

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