



Long-Awaited Brinker Decision Provides Reasonable Solution For Employers

After years of waiting, the California Supreme Court finally issued its opinion in *Brinker Restaurant Corporation v. Superior Court*, S166350, clarifying employers' meal and rest break obligations. The crucial issue for decision in *Brinker* was whether employers simply had to make meal periods available to employees, or instead were legally required to ensure the meal periods were taken. In a decision that should be welcomed by employers, the Court ruled that the former was the appropriate standard.

Elements of Employers' Duty to Provide Meal Periods

The California Labor Code imposes a general mandate that employers provide a 30-minute, unpaid meal period to non-exempt employees who are scheduled for five or more hours of work, and a second 30-minute meal period to such employees who are scheduled for ten or more hours of work. The *Brinker* decision provides employers with a clear roadmap concerning meal period obligations by identifying four clear requirements. In order to comply with the meal period requirement, employers must: 1) relieve the employee of all duty during the meal period; 2) relinquish control over the employee's activities during that period; 3) permit the employee a reasonable opportunity to be uninterrupted during the period; and 4) not impede or discourage the employee from taking the break.

The Court ruled that employers are not obligated to "police" meal periods and ensure no work is performed during the period. If an employee who has been relieved of duty nonetheless works during the meal period, this does not place the employer in violation of its obligations; however, the employee must be paid for the time worked during the meal period. It remains crucial that meal periods be recorded on non-exempt employee time records.

Meal Period Timing

The Court also clarified when meal periods must be provided during the work day; the sole requirement is that a first meal period must be provided no later than the end of an employee's fifth hour of work, and a second meal period must be provided no later than the end of the tenth hour of work.

Rest Breaks

In addition, the Court provided employers with more certainty about their rest break obligations, holding that employees are entitled to a 10 minute rest break for work shifts from three and one-half to six hours in length, another 10 minute rest break for shifts from six to ten hours in length, a third 10 minute rest break for shifts from ten to fourteen hours in length, and so on. The Court also clarified that rest periods do not necessarily have to fall before or after any meal period (although they should, to the extent possible, be made available near the middle of each four hour work "block").



Employers Should Review Policies Concerning Meal Periods, Rest Breaks, and Off-the-Clock Work

To reduce the risk of individual or class action lawsuits concerning meal/rest periods, employers should make sure they have in place, and consistently enforce, meal and rest period policies that comply with the above requirements, as well as a policy expressly prohibiting all “off-the-clock” work by non-exempt employees.

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