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California Court Of Appeal Clarifies That Employers Must Provide Employees With Meal Breaks, But Do Not Have To Ensure They Are Taken

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The days of paternalistic meal break monitoring may be coming to an end in California. Clarifying a key legal issue, the California Court of Appeal for the Fourth District has explained what it means to "provide" employees with meal breaks. On Tuesday, July 22, 2008, the Court ruled in *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, 08 C.D.O.S. 9247, that employers are only required to "provide" meals breaks for their workers, not to ensure meal breaks are actually taken.

Brinker involved a class action by a group of restaurant employees who alleged their employer failed to provide certain rest breaks and meal breaks and that the restaurant required them to perform work "off the clock" during meal periods. In its opinion, the Brinker Court addressed the restaurant employees' claims and their amenability to class treatment. Most notable, however, is the Brinker Court's rejection of the plaintiffs' assertion that employers must "ensure" meal breaks. Citing White v. Starbucks Corp., 497 F. Supp. 2d 1080 (N.D. Cal. 2007), a published federal court decision, the Brinker Court held that language in the California Labor Code requiring employers to "provide" meal breaks means only that employers must "offer" meal breaks or make such breaks available. In reaching its decision, the Brinker Court reasoned that "public policy does not support the notion that meal breaks must be ensured. If this were the case, employers would be forced to police their employees and force them to take meal breaks. With thousands of employees working multiple shifts, this would be an impossible task. If

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they were unable to do so, employers would have to pay an extra hour of pay any time an employee voluntarily chose not to take a meal period, or to take a shortened one."

The *Brinker* decision may also have broad implications for class actions, including making it tougher for employees to get class certification. *Brinker* specifically held that "the question of whether employees were forced to forgo rest breaks or voluntarily chose not to take them is a highly individualized inquiry that would result in thousands of mini-trials to determine as to each employee if a particular manager prohibited a full, timely break or if the employee waived it or voluntarily cut it short." The Court's recognition of the "highly individualized inquiry" involved may lead courts reviewing meal and rest break class actions to find that employees' claims are too individualized to be given class treatment.

Although *Brinker* is an important and positive victory for employers, it does not fully resolve this issue. Specifically, the Court of Appeal for the Third District previously held in *Cicairos v. Summit Logistics Inc.*, 133 Cal. App. 4th 949 (2005), that employers have an affirmative duty to ensure that employees receive meal periods. The *Brinker* Court dismissed *Cicairos*, calling it distinguishable from *Brinker* on its facts. Given the split between *Brinker* and *Cicairos*, *Brinker* may be appealed to the California Supreme Court. Manatt will be closely monitoring any legal developments in this area.

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