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Client Alert

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California Supreme Court Clarifies Employer Meal and Rest Period Obligations

by Cynthia Moir

Subject to limited exceptions, California law requires employers to provide employees who work more than five hours per day with at least one meal period of 30 minutes or more and a 10-minute rest period for every four hours worked or "major fraction thereof." If an employer fails to provide an employee with either a meal or rest period, the employer is required to pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period was not provided.

While these laws may appear straightforward, conflicting interpretations of the obligations imposed upon employers have caused considerable debate and much litigation in recent years. On April 12, 2012, the California Supreme Court finally addressed these issues in *Brinker Restaurant Corp. v. Sup. Ct*.

Of note, the Court rejected the theory that employers must ensure that meal periods are taken and declined to impose any timing restrictions on meal or rest periods other than those expressly contained in the Labor Code. Nonetheless, the Court reaffirmed that the class action may be a proper vehicle for wage-and-hour cases.

In a unanimous decision, the Court held as follows:

- **Duty to Provide Meal Periods:** Employers need only provide employees with the opportunity to take meal periods; they do not need to ensure that meal periods are taken. An 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. Per the Court, an employer who follows this rule will not be liable for a meal-period penalty if an employee chooses to work through an authorized meal period, but the employer could be responsible for payment of the employee's regular pay (and overtime, if applicable) if the employer "knew or reasonably should have known" that the employee was working through the meal period.

- **Meal-Period Timing:** The Court declined to require employers to provide a meal period for every five hours of work, also known as the "rolling" five-hour rule (which would have effectively required additional meal periods for employees who took early meal periods), and declined to impose any timing requirements other than those stated in the Labor Code, i.e., an employer's obligation is to provide a first meal period after no more than five hours of work and a second meal period after no more than 10 hours of work.

- **Duty to Provide Rest Periods:** The Court construed the term "major fraction thereof" as applied to a four-hour period to mean any amount of time in excess of two hours. Employees therefore are entitled to a total of 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.

- **Rest Period Timing:** The court also declined to impose any timing requirements for rest periods other than those stated in the Labor Code, i.e., employers must authorize and permit employees to take rest periods in the middle of each work period insofar as practicable. However, in the context of an eight-hour shift, one rest break should generally fall on either side of the meal break. Shorter or longer shifts and other factors that render such scheduling impracticable may alter this general rule.

- **Certification Issues:** Despite the myriad individual issues that may arise in these types of cases, the Court held that meal-period claims (as well as related off-the-clock claims) and rest-period claims may be suitable for class treatment where an employer maintains a uniform policy that violates wage-and-hour laws (although such policy must be consistently applied among employees).

While this decision is largely favorable to employers, there are certain aspects of the decision that are troubling. For example, while the Court held that employers have no duty to ensure that employees take meal periods, two of the Justices, in a concurring opinion, expressed their view that *if an employer's records do not reflect that a meal period is taken, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided.*

This, once again, effectively places the burden on employers to prove that employees have the opportunity to take meal periods.

Buchalter Nemer will continue to monitor the outgrowth of this decision and will provide additional information as it becomes available. In the interim, all California employers should review (and, if necessary, revise) their meal and rest policies and procedures to confirm compliance with this decision.

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