

CALIFORNIA MEAL AND REST PERIOD LAWS AND RECENT CHANGES MANDATED BY THE CALIFORNIA SUPREME COURT'S *BRINKER* DECISION.

For the better part of the last 100 years, California law has guaranteed wage and hour protection for employees, including meal and rest periods. These wage and hour regulations were promulgated by the Legislature and enacted in the Labor Code, as well as by the Industrial Welfare Commission (IWC) by virtue of its Wage Orders. In the year 2000, for the first time, the Legislature and the IWC, adopted monetary remedies for the denial of meal and rest breaks. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094, 1105-1106. A host of litigation followed shortly, leaving many employers scratching their heads in terms of what they were allowed – and not allowed – to do with respect to meal and rest breaks for their hourly employees. In the recent *Brinker* decision in April 2012, the California Supreme Court seemed to squarely address the viability of California's long-standing meal and rest break law and more importantly, specifically outlined the employer's duties with respect to policing their employee's breaks.

Brinker Restaurant Corporation, Brinker International, and Brinker International Payroll Company, own and operate restaurants throughout California, including Chili's Bary & Grill and Maggiano's Little Italy, as well as Roman's Macarani Grill. Brinker's hourly non-exempt employee filed suit against Brinker alleging that the company violated California meal and rest period laws under the Labor Code. The Division of Labor Standards Enforcement (DLSE) launched an investigation in 2002 into allegations that Brinker violated applicable meal and rest period laws, eventually filed suit, and Brinker eventually settled that suit for \$10 million as well as stipulating to a court-ordered injunction to ensure future compliance. Their employees filed a class-action suit on behalf of its hourly cooks, servers, bus-persons, host and wait staff, for the same violations. The class is estimated at just under 60,000 employees.

The plaintiffs alleged that Brinker did not provide the minimum required meal periods required by the Labor Code and IWC Wage Order; Brinker sometimes required "early lunching," a single meal period soon after the beginning of a work shift, followed by 6 or more hours without an additional meal period; and Brinker required employees to work off the clock during meal periods and engaged in altering employee time records to misreport the amount of time work and break time taken.

MEAL BREAKS – WHAT IS THE EMPLOYER REQUIRED TO DO?

In *Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal. 4th 1004, the court held that:

- Employers must "provide" an opportunity to take a meal period but do not have to "ensure" that the meal period is taken.

- Employers must relieve employees of all duty, relinquish control over their activities, and permit them a reasonable opportunity to take an uninterrupted 30 minute break and may not impede or discourage them from doing so. Employers may not undermine this policy by pressuring employees to perform their duties in ways that omit breaks.
- Employers are not required to “police meal breaks and ensure that no work” is performed.
- If an employee does perform work during a meal period, this does not create liability for the employer for premium pay under the Labor Code.

California law on this point is in step with but is more detailed than federal law. By federal regulation (29 CFR 785.19(B)), a meal period is required to be “duty free” and the employee must be allowed to leave his or her work station, but an employer can require that the employee remain on the premises.

California has 17 separate Wage Orders promulgated by the Industrial Welfare Commission (IWC). Employees working in an industry for which there is an industry order are covered by the order regardless of the occupation, unless specifically exempted by the industry wage order. Employees who are not covered by an industry order are regulated by Occupation Order, or if no specific industry order or occupation order applies, by “miscellaneous” Wage Order 17.

MEAL BREAKS – TIMING

- A first meal period must be provided no later than the end of the employee’s 5th hour of work.
- A second meal period is only required if the employee worked more than 10 hours.
- California Labor Code Section 512(A) provides that an employer must provide an employee with a meal period of at least 30 minutes for any work period of more than 5 hours per day. However, if the total work period per day is no more than 6 hours, the meal period may be waived by mutual consent of the employer and employee.

An employer must provide a minimum 30 minute second meal period for employees for work periods of more than 10 hours per day. However, if the total hours worked is no

more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived.

- Employers must keep meal period record for each employee and must make the records available for inspection by the employee upon request.
- On duty meal periods are permitted only if nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to on-duty meal period. The writing must also provide that the employee may revoke the agreement at any time.

REST BREAKS

- Employees must provide a 10 minute rest period for every 4 hours work. No rest period are necessary when the total daily work time is less than 3 ½ hours.
- Nursing Moms. Employers must provide break times for employees who wish to nurse their infant children unless it would seriously disrupt the employer's operations to do so. Employers must make reasonable efforts to provide a location (other than a toilet stall) for the mother to nurse the child.

PENALTY FOR VIOLATIONS

- The penalty for an employer who does not provide the required rest and meal periods is payment to the employee an additional hour of pay (premium payment) for each work day that the meal or rest period is not provided. A separate penalty can be assessed for violation of both the meal and rest period requirements. *United Parcel Service, Inc. v. Superior Court* (2011) 196 Cal.App.4th 57.

PAYMENT OF WAGES WHEN EMPLOYMENT ENDS

- The employer must pay an employee earned wages including accrued vacation when an employee is:
 - Involuntarily terminated;
 - Released after completing a specific job assignment;
 - Released after expiration of time for which the employee was hired.
- If an employee quits he must be paid on the last day of work, but if no prior notice is given, the employee must be paid within 72 hours after notice is given.

- The penalties for failing to pay final wages on time included accrual of an employee's wages on a daily basis until paid, up to a maximum of 30 days.
- An employer must keep accurate documentation, time in and time out records. An employer is now allowed a defense for a violation without time records.