



Client Alert

The California Supreme Court issues its much anticipated Brinker decision on meal and rest breaks, and it is a huge win for employers.

Brinker Decision is In: California Supreme Court Hands Employers a Victory and Provides Clarity on Meal and Rest Break Litigation

California law has long provided wage and hour protection to employees, including meal and rest periods. In 2000, however, the California Legislature enacted changes that for the first time provided monetary remedies for the denial of meal and rest breaks to hourly non-exempt employees. How to apply the meal and rest period rules was anything but clear. This ushered in a wave of litigation against companies in California, and most of that litigation has been in the form of multi-million dollar class actions.

Today [April 12, 2012], the California Supreme Court, in *Brinker v. Hohnbaum*, handed employers an enormous victory, and brought clarity to the rules for meal and rest breaks. The Court also made important rulings on class certification of these lawsuits. This alert addresses only the clarification of the meal and rest break law.

On meal breaks, employers have a duty to provide employees with a meal period of 30 minutes for any shift over five hours. The most vexing question facing employers for over a decade has been: What does it mean to "provide" a meal break — to make the break available, or ensure that the employee takes the break.

After carefully construing a history of about 100 years of Labor Codes, regulations, and legislative intent, the Court concluded that: "an employer's obligation is to relieve its employee of all duty, with the employee thereafter at liberty to use the meal period for whatever purpose he or she desires, but the employer need not ensure that no work is done."

This means that the employer "relinquishes control over [the employees'] activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so."

However, the employer has no "affirmative obligation to ensure that workers ... are not performing any work." The "employer is not obligated to police meal breaks."

And proof that the employer "had knowledge of employees working through meal periods will not alone subject the employer" to monetary penalties — "employees cannot manipulate the flexibility granted them by employers to use their meal breaks as they see fit to generate such liability."



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On the timing of when these meal breaks must be provided, the Court held that:

- The first meal period must be provided “no later than the end of the employee’s fifth hour”
- A “second meal period no later than the end of the employee’s 10th hour of work”
- The employer has no other obligations on the timing of providing the meal periods

This resolves the issue that employers need not provide a meal break on a rolling basis every five hours. That is, even if a meal break is provided three hours into the employee’s shift, the next meal break is due after 10 hours — and not after 8 hours.

On rest breaks, employers must provide breaks as follows:

- “Employees are entitled to 10 minutes’ rest for shifts from three and one-half hours 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”

On the timing of when the breaks must be provided, the Court rejected any absolute rule that these breaks must be given “before any meal period.”

However, the Court held that:

- Employers must make a “good faith effort” to authorize and permit rest breaks in the middle of each work period”
- As a “general matter,” in the context of an eight hour shift, “one rest break should fall on either side of the meal break” — yet employers may deviate from that preferred course where “practical considerations render that infeasible”

After a dozen years of litigating differing theories on how to apply the meal and rest break rules, and a 60-page Supreme Court opinion, these are now the definitive rules governing meal and rest breaks in California.

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