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LEGAL ALERT



Legal Alert: California Court of Appeal Re-addresses a California Employer's Duty to Provide Meal and Rest Periods for its Employees

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Following on the heels of the California Supreme Court's decision to grant review in *Brinker Restaurant Corporation v. Superior Court*, which interpreted California's meal and rest period requirements, a California Court of Appeal has re-addressed California's break requirements. In *Brinkley v. Public Storage, Inc.* (10/28/08), the Court of Appeal determined: (1) employers must provide, but not ensure, meal periods for employees; (2) meal periods need not be provided within the first five hours of the shift (only that they be provided at some point during a shift of 6 hours or more); and (3) employers must provide, but not ensure, rest periods for employees.

In *Brinkley*, which was filed as a putative class action, an employee alleged he was unable to take an uninterrupted thirty minute meal period within the first five hours of his shift (but not necessarily that he was unable to take a meal period at some point during the shift). The employee further alleged he rarely took his daily rest periods. Thus, the employee claimed entitlement to a penalty for each missed meal and rest period because the employer failed to *ensure* that he took the appropriate breaks.

The Court of Appeal rejected the employee's allegations, and noted the employee failed to present any evidence that the employer failed to provide the employee with the opportunity to take an appropriate meal or rest period. Thus, the Court of Appeal held that an employer must provide the opportunity to take an appropriate meal and rest period, but not ensure that employees actually take the appropriate breaks.

Employers' Bottom Line:

In light of the California Supreme Court decision to grant review in *Brinker*, a petition for review will almost certainly be filed in the *Brinkley* case as well. As such, employers should be leery of any changes to their meal and rest period policies until the California Supreme Court issues its final decision on the subject. If you have any questions regarding this case or your own meal and rest period policies, please contact the Ford & Harrison attorney with whom you typically work with or the author of this Alert, Jesse Caryl, an attorney in our Los Angeles office, at jcaryl@fordharrison.com or 213- 237-2450.

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