Gimme a Break:
Flores Court Sides with Employer on California Meal Period Issue

California wage and hour law often mandates the impossible. As one example, employers must provide non-exempt employees with completely uninterrupted meal and rest periods of certain durations beginning by specific times in their shifts. Minor violations (*e.g.*, returning a few minutes early or starting a meal period a few minutes late) can lead to major damages. Further complicating compliance, some employees do not *want* to take meal and rest periods as prescribed by the California legislature. An employee may prefer to deal with a customer issue or continue working for tips during a scheduled meal period. An employee may prefer to continue working so as to finish earlier and get home. An employee may be able to eat during a slow period without having to clock out for an unpaid 30 minutes. In some cases, an employee may even clock in and out "by the book" in order to hide non-compliance.

Given the friction between the technical requirements of California law and the practical realities of the workplace, it is not surprising that the plaintiffs' class action bar has swarmed to meal and rest period claims. A pivotal dispute in these cases is whether employers must ***ensure*** that employees take meal periods, or whether employers need only ***allow*** employees to do so. Two Court of Appeal decisions -- Brinker Restaurant v. Superior Court and Brinkley v. Public Storage -- ruled in the employer's favor, but now have been pending on appeal before the California Supreme Court for over two years! While Supreme Court review is pending, the Court of Appeal decisions may not be relied upon as authority. Additionally, many lower court opinions are unpublished, and unpublished decisions may not be cited in California State courts.

Last week, the California Court of Appeal, Second Appellate District in Flores v. Lamp Plus (May 10, 2011) addressed this issue. Specifically, Flores ruled that "employers must provide employees with breaks, but need not ensure employees take breaks." Since Flores is certified for publication, it may be cited in California State court. Eventually, the California Supreme Court will resolve this issue. In the meantime, employers should continue to engage in their best efforts to ensure that their meal and rest period policies and practices comply with the strictest interpretation of California law. Recommended steps include policy review, training, internal audits, and discontinuing auto-deduct timekeeping practices for meal periods. Employers should also adopt procedures for employees to verify their own time records, to report any unscheduled work or other changes, and to notify Human Resources of any pay practice violations. Additionally, employers should discipline supervisory or hourly employees who do not comply with meal and rest period policies. For more discussion of the California requirements for meal and rest periods and further analysis of the Flores decision, please click here.

If you have any questions, please feel free to contact Brad Harvey, Kyle Young or your Miller & Martin Labor & Employment law attorney.

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