

labor and employment lawflash

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California Supreme Court Clarifies Meal and Rest Break Obligations

Long-standing questions over California employers' responsibilities to provide meal and rest breaks, including frequency and timing, are resolved.

On April 12, the California Supreme Court issued its long-awaited opinion in *Brinker Restaurant Corp., et al. v. Superior Court (Brinker)*. Clarifying a number of issues that have been the subject of much litigation in California for many years, the court ruled that employers satisfy their California Labor Code section 512 obligation to "provide" meal periods to nonexempt employees by (1) relieving employees of all duty; (2) relinquishing control over their activities and permitting them a reasonable opportunity to take an uninterrupted 30-minute break; and (3) not impeding or discouraging them from doing so. Importantly, the court agreed that employers are not obliged to "police" meal breaks to ensure that no work is performed. Even if an employee chooses to work during a properly provided meal period, an employer will not be liable for any premium pay, and will only be liable to pay for the time worked during a meal period so long as the employer knew or reasonably should have known that the employee was working during the meal period. The court also clarified the law with respect to the number and timing of rest periods that must be authorized and permitted for employees.

Based on the court's decision, employees may be afforded greater flexibility as to meal breaks, without employers facing premium pay liability as a result.

Join us on Wednesday, April 18, at 10:00 am PT/1:00 pm ET for a free webinar discussing the application of *Brinker* to employee policies and practices: "**The California Workplace Post-*Brinker*: Practical Guidance for Employers.**" [Click here](#) for more information or to register to attend.

The Facts

Brinker Restaurant Corporation operates various restaurants throughout California, including such chains as Chili's Grill & Bar, Romano's Macaroni Grill, and Maggiano's Little Italy. Brinker's written policy stated that employees are entitled to a 30-minute meal period if they worked more than five hours, and that they must clock out for a minimum of 30 minutes for meal periods. Employees who worked more than 3.5 hours were "eligible for one [10-]minute rest break for each 4 hours that [they] work."

Five employees brought suit alleging that Brinker failed to provide rest breaks and meal breaks to hourly employees. The employees brought their claims as a class action on behalf of nearly 60,000 workers. The trial court granted class certification, which was reversed by the court of appeal. The California Supreme Court granted review in October 2008.

Significant Compliance Questions Posed

Brinker presented several significant questions for the California Supreme Court to resolve, including the following:

- What does it mean for employers to be required to "provide" a duty-free meal period of not less than 30 minutes?

- How many rest breaks must be provided to employees who work more than six hours, or more than 10 hours?
- What, if any, timing requirements are there for when rest periods and meal periods must be provided?
- Does the meal break law's reference to "five hours" mean that if an employee takes an "early lunch," another meal break must be provided five hours later?

Supreme Court Ruling Resolves Questions

The "Provide" Standard for Meal Breaks

The Supreme Court included a lengthy discussion of an employer's obligations as to meal breaks. First:

When someone is suffered or permitted to work—i.e., employed—for five hours, an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Second, the requirement to provide an "off duty" meal period is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period.

Third, the employer is not required to ensure that no work is actually done during the meal period. Rather, it must relieve an employee of all duty, whether or not the employee continues to work. If work does continue that the employer knew, or should have known, about, the employer must pay for the hours worked, but will not be liable for premium pay because it did not violate its meal break obligations.

However, the court made it clear that employers cannot "impede or discourage" employees from taking an uninterrupted 30-minute break: "The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forgo, or otherwise encouraging the skipping of legally protected breaks." For example, the court referenced a case where there was a scheduling policy that made taking breaks extremely difficult.

Timing of Meal Breaks

The court rejected the argument that meal breaks must be provided every five hours on a *rolling* basis. Instead, a second meal break must be provided only if an employee works more than 10 hours. The court also held that a first meal break must be provided "no later than the start of an employee's sixth hour of work," and a second meal break must be provided "no later than what would be the start of the 11th hour of work, absent waiver."

Frequency and Timing of Rest Breaks

An employee must be provided 10-minute rest breaks for every four hours worked "or major fraction thereof." The Supreme Court interpreted this language to mean that employees "are entitled to 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." The court rejected the argument that the first rest break must always precede any meal period. Rather, employers have a "duty to make a good faith effort to authorize and permit rest breaks in the middle of each work period, but may deviate from that preferred course where practical considerations render it infeasible." The court declined to address what factors might justify such a deviation.

Off-the-Clock Allegations

The court endorsed the rule that an employer is liable for off-the-clock work only if it knew, or should have known,

such work was occurring. When employees record that they are doing no work (such as during meal periods), this creates a presumption that the employees will bear the burden of countering.

Class Action Implications

The court also addressed various class certification rulings by the trial court. It held that the off-the-clock claim should not have been certified because Brinker had a policy prohibiting off-the-clock work and there was no evidence of a “systematic company policy” to pressure or require employees to work off the clock. The rest break claim, on the other hand, was properly certified because Brinker had a uniform written policy that was allegedly in conflict with the California rest break requirements—specifically, it failed to include reference to rest breaks for “every major fraction” of four hours worked. The meal break certification ruling was sent back to the trial court for reconsideration in light of the clarification of the meal break law provided by the Supreme Court.

Practical Implications

Despite the Supreme Court’s generally favorable ruling for the employer on the issues presented, *Brinker* points out the importance of having clear and accurate policies and practices in place to reduce the risk of liability. In particular, employers should consider the following dos and don’ts, in consultation with legal counsel:

- Do adopt California-specific meal and rest period policies for California employees (even if the employer is headquartered outside of the state). These policies should carefully track the statutory language as defined by *Brinker*, including providing a second meal period for employees who work more than 10 hours, and using the phrase “or major fraction thereof” in describing an employee’s entitlement to rest breaks for every four hours worked.
- Don’t discourage, prevent, or interfere with an employee’s right to take duty-free meal and rest periods.
- Do have procedures in place for employees to report if they did not have a reasonable opportunity to take an uninterrupted 30-minute meal break.
- Do provide the opportunity for meal breaks to begin no later than the start of an employee’s sixth hour of work, and for a second meal break no later than the start of the 11th hour of work. Note that the second meal period may be waived by mutual consent of the employer and employee, if the shift is no longer than 12 hours.
- Do have procedures for recording meal breaks as required by California regulations. In light of *Brinker*, employers should also have procedures for employees to record when they have worked during a meal period, despite being relieved of all duty, so that this time can be paid for.
- Do authorize and permit a rest period of at least 10 minutes for shifts of 3½ to 6 hours; a second rest period for shifts of 6 to 10 hours; and a third rest period for shifts of 10 to 14 hours. Employers should attempt, to the extent practical, to provide these rest breaks in the middle of each work period.
- Do understand and comply with the obligation to pay premium pay if meal or rest periods are not provided under the standards explained in *Brinker*.

Contacts

Morgan Lewis has a nationwide team of attorneys who advise employers in designing and implementing meal period and rest break policies that comply with all applicable legal standards. For questions on any of the issues raised in this LawFlash, please contact one of the following Morgan Lewis attorneys:

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