

***First Wednesday — A Monthly Discussion of Employment Law  
Issues and Other Hot Topics for Management***

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**New California Case about Meal and Rest Breaks  
Helps Employers**

In the past several years there have been countless wage and hour cases in California alleging violation of meal and rest break requirements. At the same time, California employers have been advised to make sure their employees take meal and rest breaks, or face almost certain liability for failure to comply with state law. A recent case decided by the California Court of Appeal in San Diego may have finally given employers a more sensible rule to follow: employers must make sure to *provide* the required meal and rest breaks, but don't have to *ensure* the breaks are taken.

In *Brinker Restaurant Corp. v. Superior Court (Hohnbaum, et al.)* 2008 Cal.App. LEXIS 1138, the court articulated a standard for providing meal and rest breaks, and clarified when, during a shift, the breaks must be provided. The court also made significant rulings regarding wage and hour class actions – but the court's discussion of meal and rest breaks, which has been a very confused topic recently, deserves attention for its impact on day-to-day management.

**The *Brinker* Facts:**

Brinker Restaurant Corporation operates 137 restaurants in California, including Chili's Grill & Bar, Maggiano's Little Italy, and Romano's Macaroni Grill. The company's written policies told employees what breaks they were entitled to, informed employees that failure to take breaks could result in discipline including termination, and set forth

the company's policies regarding the use of time clocks. Before the employees in the *Brinker* case filed their suit against the company, Brinker had been investigated by the California Division of Labor Standards Enforcement ("DLSE") for alleged wage and hour violations. Before the DLSE case was decided, Brinker settled the case for \$10,000,000 and agreed to a court-ordered injunction to ensure its compliance with state meal and rest period requirements for a specified length of time.

The civil suit against Brinker followed, and the employees alleged they were told to take half hour meal breaks during the first hour of their shifts, and then were not allowed a second lunch break even if they worked up to nine consecutive hours after the first lunch break. Brinker argued that it was only required to give one half hour meal break anytime during the first five hours of work, and another half hour meal break after the tenth hour of work. The company also argued that the restaurant employees did not want to be forced to take their lunch break in the middle of their shift when they made most of their money. The employees also claimed it was the employer's duty to make sure they took their meal breaks and that Brinker failed to pay them for work performed "off-the-clock".

In the midst of the confusion that has existed over the past several years regarding meal periods and breaks, and the on-again, off-again efforts at regulatory intervention, the decision by the Court of Appeal is dramatic and clear. The court's lengthy and precise ruling states that: (1) employers cannot impede, discourage or dissuade workers from taking meal breaks and rest periods, but they need only provide for them, *not ensure* they are taken; (2) employers only need to authorize and permit rest periods every four hours (or a major fraction thereof) and the rest periods don't have to be in the middle of each work period if having a break at the shift's midpoint is impracticable; (3) employers are not required to provide a meal period for every five consecutive hours worked; and (4) employers cannot coerce, require, or compel employees to work off the clock, but should only be held liable for employees working off-the-clock if they knew or should have known they were doing so.

The court also held that determining whether employees were denied breaks or rightfully earned overtime pay required individual inquiries that could not be decided, at

least in this case, on a class action basis. The court then directed the trial court to vacate its order certifying the class action.

## Conclusion

The *Brinker* case was immediately hailed as a major win for employers as many companies have struggled with the logistics of running a business and navigating the minefield of California wage and hour law. It is important to remember that even though the *Brinker* decision is very favorable to employers, other Courts of Appeal might come to different conclusions and the Department of Industrial Relations may attempt to enact regulations that differ from the *Brinker* court's holding. The *Brinker* decision does provide a practical and more realistic interpretation of meal and rest period obligations, but rules regarding meal and rest breaks and overtime pay must be followed closely, and it is the employer's responsibility to set the policies, monitor compliance with company policies, and keep accurate records of every employee's work hours and breaks.

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