

Brinker Case Decided Today

April 2012

Employers Need Not Ensure Meal Periods Taken

Greetings!

It is finally here! The California Supreme Court announced today the long-awaited wage and hour decision in the Brinker Restaurant case.

All California employers subject to the meal and rest period requirements of the Labor Code and the Wage Orders will be impacted by this landmark decision. Although the decision is favorable to employers in many respects, it is not a complete victory. The most important aspects of the case are outlined below.

Meal Periods - Employer's Obligation to Provide

- An employer has a duty to provide a meal period to its non-exempt employees.
- Employers satisfy this obligation if: (1) they relieve employees of all duty; (2) relinquish control over their activities; (3) permit a reasonable opportunity to take an uninterrupted 30-minute break; and (4) do not impede or discourage employees from doing so.
- The employer is not obligated to police meal breaks and ensure no work is performed.

Meal Periods - Timing of When They Must Be Taken

- The first meal period must be no later than the end of the employee's fifth hour of work.
- The second meal period must be no later than the end of the employee's tenth hour.
- Meal periods are not required for every five hours of work.
 - "Early lunching" itself does not trigger an obligation for a second meal period.
 - Example: Employee takes the first meal period after working two hours and then works a total of six more hours for an eight-hour shift. The employee is not entitled to a second meal period.

Rest Periods - Total Time Required

- Employees are not entitled to a rest break if they work a shift of less than 3.5 hours.
- Employees are entitled to a total of 10 minutes rest for shifts from 3.5 hours to 6 hours in length; 20 minutes for shifts of more than 6 hours up to 10 hours; 30 minutes for shifts of more than 10 hours up to 14 hours; and so on.
- The Court reversed the prior ruling favorable to employers that entitled employees working a seven-hour shift to only 10 minutes of rest period.

Rest Periods - When Breaks Must be Provided

- Employers do not need to provide the employee's first rest period before the first meal period is taken.
- Employers should make a good faith effort to authorize and permit rest breaks in the middle of the work period.
- Employers may deviate from this preferred course where practical considerations render it infeasible.
- As a general matter, in an eight-hour shift, one rest break should fall on either side of the meal break but factors of impracticability will be analyzed to determine compliance.

Open Questions Remain

Unfortunately, the long-awaited decision did not answer all the questions raised in recent years about meal and rest break law. The Court provided little guidance on the proof required for an employer to satisfy the four-point obligation to "provide" meal periods. Instead, the Court signaled that a fact specific inquiry would be needed: "What will suffice may vary from industry to industry, and we cannot in the context of this class certification proceeding delineate the full range of approaches that in each instance might be sufficient to satisfy the law." Moreover, the Court did not provide guidance on the whether the employer must provide a meal period so that it can be fully taken before the sixth hour of work or whether it must simply start before the employee begins the sixth hour of work. The Court also provided little guidance on the proof required for an employer to show legal justification for a deviation from the obligation to provide a rest break in the middle of a work period. Although the Court did not discuss whether or not its decision would have retroactive application, we believe that employers should expect that it does. The Court also did not clarify an apparent conflict between the Labor Code and the Wage Orders as to whether exempt employees are also entitled to meal periods.

Impact on Class Action Explosion

Two of the Justices found it necessary to expressly warn employers about the employers' obligation to maintain accurate time records for non-exempt employees and the fact that the Court's ruling was not going to eliminate wage and hour class actions. They highlighted the interplay of the employer's legal requirement to keep time records of all in-and-out times, including meal periods, the proof of whether an employee waived the meal period and the impact of these issues in a class action lawsuit. In short, employers will not necessarily be able to avoid class action certification by claiming that questions about why an employee missed a meal period are too individualized to be appropriate for class action resolution.

Recommendations

The Court's rulings trigger an immediate need to assess your organization's written policies on meal and rest periods, as well as your actual practices, which may deviate from your written policies, and your time-keeping practices. A wage and hour audit that can identify potential violations may be wise. If issues are found, strategic actions such as voluntary payment of any premiums owed may ward off a potential class action lawsuit and significantly reduce exposure and cost.

We realize that you are busy running your organization and time is of the essence. If you have questions or concerns about this new decision and how it affects your organization's compliance, call us and we will be your resource and partner in navigating the changes.

Holden Law Group understands the responsibility required to stay compliant. We serve clients specialized expertise and a commitment to provide more than "best practices" advice.

Sincerely,

Holden Law Group

