



Legal Alert: California Supreme Court Will Determine a California Employer's Duty to Provide Meal and Rest Periods for its Employees

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The California Supreme Court has granted review of the California Court of Appeal's decision in *Brinker Restaurant Corporation v. Superior Court*, which interpreted California's meal and rest break requirements. As reported in our July 24, 2008 Legal Alert, the California Court of Appeal previously held that: (1) employers need only provide, not ensure, that rest periods are taken; (2) employers need only authorize and permit rest periods to be taken for every four hours or major fraction thereof worked (and that the rest periods are not required to be taken in the middle of the four hour period); (3) employers are not required to provide a meal period for every five consecutive hours worked; (4) employers need only provide, not ensure, that meal periods are taken; and (5) employers can only be held liable for employees working off-the-clock if the employer knew or should have known employees were doing so. See *Brinker Restaurant Corporation v. Superior Court* (7/22/08).

Following the Court of Appeal's decision, the affected employees filed a petition for review with the California Supreme Court. On October 22, 2008, the California Supreme Court granted review to determine an employer's duty to provide meal and rest periods for its employees. Thus, the Court of Appeal's decision establishing the meal and rest period standards as set forth above, no longer applies to California employers. Until the California Supreme Court issues its decision in *Brinker*, which may not occur for one year, California employers are bound by the previous regulations and legal requirements for meal and rest periods.

Employers' Bottom Line

Because the California Supreme Court may not issue its final decision in *Brinker* for upwards of one year, employers should remain diligent to ensure nonexempt employees are properly taking their mandated meal and rest periods. 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 or the author of this Alert, Jesse Caryl, an attorney in our Los Angeles office, at jcaryl@fordharrison.com or 213- 237-2450.