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In 2006 and 2008, *Corporate Counsel* magazine named Allen Matkins a "Go-To" law firm for labor and employment.

About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with over 240 attorneys practicing out of seven offices in Orange County, Los Angeles, Century City, Del Mar Heights, San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include corporate, real estate, construction, real estate finance, business litigation, employment and labor law, taxation, land use, bankruptcy and creditors' rights, and environmental. [more...](#)

Labor & Employment Legal Alert

California Appellate Court Gives Employers a Break

This week, the California Court of Appeal published its long-awaited decision in the case of *Brinker Restaurant Corp. v. Superior Court*. The *Brinker* decision, hailed by Governor Schwarzenegger, provides positive news to employers seeking to comply with California's meal and rest period requirements.

The court ruled on the following hotly debated legal issues:

Meal Periods – Employers must:

- Provide meal periods, not ensure they are taken
- Provide a 30-minute meal period for every 5 hours worked in a day (subject to the 6-hour meal period waiver rule), which need *not* be taken before the employee actually works more than 5 hours (rejecting the "rolling 5-hour" interpretation)

According to the court, forcing employees to take meal periods would place an undue burden on employers and create incentives for employees to violate meal period policies to receive extra compensation:

"While employers cannot impede, discourage or dissuade employees from taking meal periods, they need only provide them and not ensure they are taken."

Rest Periods – Employers must:

- Provide rest breaks, not ensure they are taken
- Provide a 10-minute rest break for every 4 hours worked

The court confirmed that an employer need only "authorize and permit" employees to take rest breaks, and rejected the notion that employers are required to ensure that rest breaks are taken. The court also rejected the argument that rest breaks are required for periods of less than 4 hours:

"As long as employers make rest breaks available to employees, and strive, where practicable, to schedule them in the middle of the first four-hour work period, employers are in compliance."

Off-The-Clock Time:

- Employers are only liable for "off-the-clock" work when

Class Certification:

Based on its conclusions as to the legal requirements regarding meal periods, rest breaks and off-the-clock claims, the court determined that plaintiffs' claims could not be litigated on a class-wide basis because "individual issues predominate." Accordingly, the court reversed the trial court's order granting class certification.

Governor Schwarzenegger issued a [press release](#) shortly after the decision was published applauding the court's holding and stating that it "promotes the public interest by providing employers, employees, the courts and the labor commissioner the clarity and precedent needed to apply meal and rest period requirements consistently."

Although this is a positive development, employers are advised to proceed with caution. Other courts have rendered conflicting interpretations regarding meal and rest breaks and, for this reason, the *Brinker* decision is expected to be appealed to the California Supreme Court. If the California Supreme Court accepts review of *Brinker*, the decision cannot be relied upon pending the Court's decision – which could take a year or more. Furthermore, *Brinker* does not diminish an employer's obligation to have well-established and well-followed meal and rest period policies and procedures.

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