

# No Brinker Decision Yet But Another Favorable Meal And Rest Break Decision For Employers

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On May 10, 2011, the Second Appellate District of California issued a favorable decision for employers in *Flores v. Lamps Plus, Inc.* This case serves as additional support that so long as California employers provide meal and rest breaks to employees, they have met their obligations as set forth in California Labor Code §§ 226.7 and 512 and the IWC Wage Orders.

*Lamps Plus* was brought on a class action basis by three former Lamps Plus employees who were employed as non-exempt sales associates in Lamps Plus' San Rafael location and who all reported to the same manager. Plaintiffs alleged Lamps Plus violated California labor law by denying them meal and rest breaks, requiring off-the-clock work, failing to provide itemized wage statements, and failing to timely pay wages due upon termination. Plaintiffs' complaint was premised on the theory that employers must ensure employees take meal and rest breaks and that Lamps Plus had a companywide practice of not paying timely wages upon termination and requiring off-the-clock work.

Lamps Plus had an employee handbook distributed to all its employees which included a policy requiring meal and rest breaks. Lamps Plus required that each employee acknowledge receipt of its meal and rest period policy which included an additional acknowledgment directing employees to notify Lamps Plus Human Resources if they were not provided with a meal and/or rest period. Pursuant to

California labor law, employee meal periods were logged into Lamps Plus' timekeeping system, but rest periods were not. Lamps Plus used a progressive discipline system for violations of their meal and rest period policy. Lamps Plus had a uniform procedure for payment of wages upon both voluntary and involuntary terminations, which were administered from Lamps Plus' corporate headquarters.

The Court held, consistent with federal courts, that "[i]t is an employer's obligation to ensure that its employees are free from its control for thirty minutes, not to ensure that the employees do any particular thing during that time." The Court continued that the mandatory language of the Labor Code and the Wage Order does not mean employers must ensure employees take meal breaks, but rather, employers must only provide breaks. The Court interpreted the word "provide" in the Labor Code's meal period provision to mean "to supply or make available" and in its rest period provision to mean "authorize or permit." The Court rejected plaintiffs' assertion that employers must ensure employees take meal and rest breaks finding this "utterly impractical" for employers. The Court concluded that Lamps Plus made it clear to its employees it upheld California's meal and rest period laws and went so far as to discipline employees who skipped these required breaks. The Court found troubling plaintiffs' "hypothesis of law" that an employer, "which notified its employees they must exercise their right to take breaks or risk suffering discipline for failing to take a scheduled break, must nonetheless pay a penalty to every employee who chooses to skip a rest and/or meal break."

Despite this favorable ruling, employers should be cautious because the *Brinker* case is still pending before the California Supreme Court and it will address the identical issue. Similar to Lamps Plus, companies should ensure they have well written employee handbooks that are distributed to all employees and for which all employees must sign an acknowledgment that they have read and understand its contents. In addition, supervisory employees should be trained on California

labor laws and advised to immediately advise management when violations occur.

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