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No Such Thing As A Free Lunch: Recent Changes In California Meal Period And Rest Break Law

Employers in California should review their meal period and rest break policies to ensure employees receive the breaks required by law.

February 25, 2011

California law governing employee meal periods and rest breaks has been hotly and regularly contested in the past few years, often resulting in more questions and confusion than answers or guidance for employers. *Brinker* and similar meal and rest break cases dealing with the issue of whether employers must "ensure" or simply "provide" employees with meal periods are still pending before the California Supreme Court. Nonetheless, the California legislature has been busy writing, and the courts have been busy interpreting, other aspects of meal and rest break laws.

Some Employees Now Exempt From Meal Period Requirements

On January 1, 2011, Assembly Bill 569 went into effect, amending Labor Code section 512 to exempt certain employees from the law's meal period requirements. In enacting this amendment, the legislature recognized that compliance with strict meal period requirements was impractical for certain industries. Previously, the law required that employees working five or more hours per day receive a 30-minute off-duty meal period, and employees working more than ten hours per day receive a second 30-minute off-duty meal period.^[1] These requirements still apply to most employees in most industries, but the amended Section 512 exempts certain employees from these meal period requirements where both of the following conditions exist:

1. The employee is employed:
 - a. In a construction occupation;
 - b. As a commercial driver;
 - c. In the security services industry; or
 - d. By an electrical corporation, gas corporation, or local publicly owned electric utility; and
2. The employee is covered by a collective bargaining agreement ("CBA") that, among other things, expressly provides for meal periods for the employee.^[2]

While this amendment may simplify meal period management for certain employers, such employers must carefully analyze the CBAs to make certain their employees qualify for the meal period exemption before



changing any meal period policies.

Employers Liable For Employees' Missed Meal Periods **And** Rest Breaks

The California Court of Appeal recently clarified employers' liability for employees' missed meal periods and rest breaks. Before this ruling, there had been confusion about whether an employer owed an employee one or two hours of premium pay where the employee missed both his or her meal period and a rest break in the same day. Because of the unclear wording of the statute, some courts and employers had interpreted the law to mean that an employee could receive a maximum of one hour of premium pay when the employee missed a meal and rest break(s) in the same day, while other courts and employees read the law to provide an hour of premium pay for each category of missed breaks per day. In *UPS v. Superior Court (Allen)*, the Court of Appeal clarified the issue by ruling that an employee must receive one hour of premium pay where the employee misses his or her meal period, and an additional hour of premium pay where the employee misses his or her rest break(s), for a maximum of two hours premium pay per day.

For employers, this ruling highlights the importance of providing employees with off-duty meal and rest breaks, and of maintaining accurate time records regarding meal periods. Further guidance will be available once the California Supreme Court issues its decision in *Brinker*, which many observers believe will be in 2011.

[1] Note that under the law, employees working between five and six hours per day can voluntarily waive their meal period, and employees working between ten and twelve hours per day can waive their second meal period if they did not waive the first.

[2] The CBA must also expressly provide for the wages, hours of work, and working conditions of the employees, final and binding arbitration of disputes regarding its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the California minimum wage rate.

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