

FORD & HARRISON<sup>LLP</sup>  
THE RIGHT RESPONSE AT THE RIGHT TIME

LEGAL ALERT



## Legal Alert: California Court of Appeal Clarifies Meal and Rest Period Requirements for California Employees

7/24/2008

In a “win-win” decision for employers, a California Court of Appeal has dramatically clarified the meal and rest period requirements for California employees, while simultaneously narrowing a plaintiff’s ability to certify a putative class action based upon alleged meal and rest period violations.

In *Brinker Restaurant Corporation et al. v. Superior Court* (7/22/08), several employees brought a putative class action against Brinker for alleged meal and rest period violations, as well as for unpaid hours worked. Specifically, the employees claimed that Brinker failed to *ensure* that employees received their timely meal and rest periods, as opposed to simply providing the employees with an opportunity to take an appropriate meal and rest period at some point during their shift. The employees further claimed that Brinker’s policy of requiring/permitting employees to take a meal period near the start of their shift, and then requiring the employee to continue working for five or more hours without an additional meal period violated the Labor Code (i.e., the employees argued that they must receive a meal period after working 5 consecutive hours regardless of whether they had taken a meal period earlier in the shift). Finally, the employees claimed that they worked off-the-clock without compensation. Based upon the alleged “across the board” violations, the employees sought class certification of their claims.

The Court of Appeal rejected the employees’ contentions and 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.

In addition, while addressing the class certification issues, the Court of Appeal determined that “because the rest and meal breaks need only be ‘made available’ and not ‘ensured,’ individual issues predominate” over class claims as each putative class member’s situation must be determined on a case-by-case basis. Thus, based upon the evidence presented to the trial court, the Court of Appeal determined that the employees’ claims were not amenable to class treatment. The holding should, in effect, make it more difficult to certify class-wide claims for meal period, rest period, and overtime violations.

## **Employers' Bottom Line**

The *Brinker* decision provides California employers with a new level of flexibility in scheduling and permitting employees to take their meal and rest periods. In addition, the decision highlights the importance of employers' policies and procedures regarding their wage and hour practices, and presents a perfect opportunity for employers to review their employee handbooks to ensure compliance with the clarified meal and rest period requirements.

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 with or the author of this Alert, Jesse Caryl, an attorney in our Los Angeles office, at [jcaryl@fordharrison.com](mailto:jcaryl@fordharrison.com) or 213- 237-2450.