

[Employers Are Not "Big Brother" and Cannot Force Employees to Actually Take Breaks](#)

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In [Hernandez v. Chipotle Mexican Grill, Inc.](#), published October 28, 2010, the California Court of Appeal held that, while employers must provide employees with breaks, they need not ensure employees actually take their breaks.

Rogelio Hernandez (Hernandez) brought this class action against [Chipotle Mexican Grill, Inc.](#) for allegedly denying employees meal and rest breaks. In moving for certification, Hernandez submitted statistical evidence allegedly showing that a overwhelming majority of employees missed their breaks, e.g. 92% of employees missed at least one meal break.

Chipotle also filed a motion, but to deny certification, and it presented evidence of a company-wide policy encouraging meal and rest breaks. As noted by the Court, Chipotle provides employees with free food and beverages during breaks. Because Chipotle paid employees during breaks, the employee time records may not reflect whether breaks were actually taken.

In determining whether certification was appropriate, both the trial court and appellate court addressed the legal issue of whether employers must only provide breaks, or whether employers must also ensure that breaks are actually taken.

The Court recognized that this issue was currently pending review before the [California Supreme Court](#) ([Brinker v. Public Storage](#), S166350, and [Brinkley v. Public Storage](#), S168806), but ruled that the Supreme Court would likely hold that employers need not ensure that breaks are actually taken.

The Court stated that placing this obligation on employers would place an undue burden on employers whose employees are numerous or who ... do not appear to remain in contact with the employer during the day.”

It would also create perverse incentives, encouraging employees to violate company meal break policy in order to receive extra compensation under California wage and hour laws.”

The decision is significant not only for its substance, but also for procedural reasons.

Class counsel often times will argue on certification motions that their legal theory of liability and damages should not be decided on certification, because certification is only a procedural, not a merits question. This misstates what a trial court may be obligated to review for certification.

In order to decide whether common or individual issues predominate, it must be determined at the certification stage how the law requires liability and damages to be proven at trial. This inquiry may not be able to be satisfied without the trial court actually addressing what the law is at the certification stage, and in certain cases where the certification issues are intertwined with the merits issues some analysis of the merits is permitted.

As noted by the *Hernandez* trial court, if the law does require employers to ensure breaks are actually taken, class treatment of this case would be appropriate. Having held that the law only requires employers to provide breaks, certification in this action was inappropriate.