manatt

November 13, 2008

EMPLOYMENT LAW @MANATT
NEWSLETTER OF THE EMPLOYMENT & LABOR PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

# Another Court Holds That Employers Are Not Required to Force Employees to Take Breaks

Alison White
Esra Hudson

On October 28, 2008, the California Court of Appeal affirmed an order of the Los Angeles County Superior Court holding that meal and rest periods must merely be made available, not forced upon employees. *Brinkley v. Public Storage, Inc.*, No. B200513, __ Cal. App. 4th __ (2d Dist., Div. 3, Oct. 28, 2008, modified Nov. 5, 2008). The court rejected the class action plaintiffs' argument that case law or the Industrial Wage Orders obligate employers to ensure meal periods are taken, stating "the meal period laws do not *obligate* employees to take meal periods or employers to ensure meal periods are taken." In light of the steps taken by Public Storage to provide meal and rest breaks, and the plaintiff's inability to prove that he or other class members were ever denied an opportunity to take meal or rest breaks, the court concluded that the trial court was correct in dismissing the plaintiff's meal and rest break claims.

While this decision is good for employers, it is not the final word in this unsettled area of the law. The *Brinkley* decision tracks the well-known *Brinker* case (*Brinker Restaurant Corp. v. Superior Court*, formerly published at 165 Cal. App. 4th 25 (2008), pending as No. S166350) currently on review before the California Supreme Court to determine an employer's obligation with respect to meal and rest periods. Because the California Supreme Court is reviewing *Brinker*, it is quite possible that the Court may grant review of *Brinkley* as well. Thus, employers are advised to use caution with meal and rest period policies and practices until the *Brinker* decision is issued and the *Brinkley* decision is final.

The *Brinkley* decision also sheds some light on where

## NEWSLETTER EDITORS

**Andrew Satenberg**
Partner
asatenberg@manatt.com
310.312.4312

**Esra Acikalin Hudson**
Partner
ehudson@manatt.com
310.312.4381

## OUR PRACTICE

Manatt's employment and labor attorneys work in partnership with our clients, bringing value by serving as an extension of their in-house human resources and legal groups. We offer comprehensive counsel on employment relationships to employers of all sizes across a wide business and industry spectrum. Our attorneys apply years of experience, extensive employment law skills ... more

. Practice Group Overview
. Practice Group Members

## INFO & RESOURCES

. Subscribe
. Unsubscribe
. Sarbanes-Oxley Act
. Newsletter Disclaimer
. Technical Support
. Manatt.com

California courts fall on two additional issues, which are also favorable to employers. Again, however, these issues may not be final subject to possible review of *Brinkley* by the California Supreme Court.

First, the *Brinkley* court rejected the plaintiff's contention that a meal period must be taken within the first five hours of a shift, stating that nothing in the applicable statutes or wage orders supported the plaintiff's position. Thus, according to the *Brinkley* decision, an employer may provide a meal period at any time during an employee's shift.

Second, the court clarified that paystub violations under Labor Code section 226, which specifies the information that must be included on a paycheck stub, must be both knowing and intentional, and must also cause actual injury to the plaintiff. The court dismissed Brinkley's Section 226 claim for alleged violations resulting from Public Storage's inadvertent misstatement of the plaintiff's associated mileage earnings rate on certain of his paystubs because the error in the paystubs did not result in a loss of pay, and Public Storage corrected the misstatements as soon as they were discovered. This decision provides employers with an important tool to defend against technical violations of Section 226 that do not result in any injury to employees.

While it remains to be seen whether *Brinkley* is the final word on these issues, the decision gives employers guidance as to where one Court of Appeal believes the law currently is, and where it ultimately may be settled.

back to top

FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:

**Alison Sultan White** Ms. White is experienced in a full range of employment matters, including wage and hour issues, employment agreements, personnel practices and policies, leaves of absence, hiring and termination decisions, workplace violence issues, and trade secrets, among others. Ms. White's practice also focuses on employment litigation, including civil claims involving wrongful terminations, harassment, discrimination, and unpaid wages. Ms. White is also experienced in general business litigation, including contract disputes, business torts and other commercial matters.

**Esra Acikalin Hudson** Ms. Hudson's practice focuses on all aspects of employment law and related litigation. She represents companies in state and federal court in

claims of discrimination, harassment, wrongful discharge and related tort claims, breach of contract, trade secrets, and unfair competition, and all other employment-related matters. Ms. Hudson also defends companies against employment-based class actions. She regularly represents employers in proceedings before state and federal agencies, including the California Department of Fair Employment and Housing, the California Division of Labor Standards Enforcement and the federal Equal Employment Opportunity Commission.