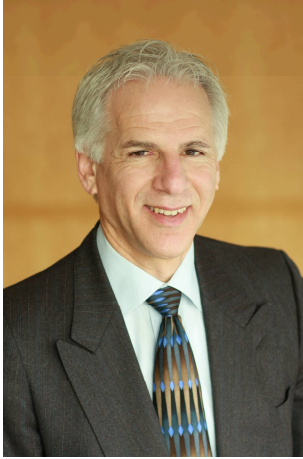


## LABOR COMMISSIONER ANNOUNCES NEW 2012 EMPLOYEE FORM



David Goldman is partner at Wendel, Rosen, Black & Dean LLP, where his practice focuses on employment law and business litigation. In addition, he frequently provides counsel for clients' employment practices and develops employee handbooks and policy manuals for employers.

Email: [dgoldman@wendel.com](mailto:dgoldman@wendel.com)  
Phone: 510.834.6600

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### December 30, 2011

One of many laws enacted recently by the California Legislature was Assembly Bill 469, known as the Wage Theft Prevention Act of 2011. This legislation added or revised various provisions of the California Labor Code, effective January 1, 2012. Changes in the law included an increase in the statute of limitations for penalties available under the Labor Code, an increase to the amount of time employers will be required to retain employee payroll records from two to three years, and potential criminal liabilities against employers who willfully refuse to pay a final court judgment or order to pay wages due, among others.

The legislation also enacted Labor Code section 2810.5, which requires employers to provide all non-exempt employees with a written notice, at time of hire, identifying certain information such as the employee's rate of pay and its basis, whether by hour, day, commission, salary or otherwise, and all rates for overtime, if applicable, among other information. The information required to be given to new employees has been detailed in my article, "New Written Notice Required to New Employees in 2012," available on my webpage [www.wendel.com/dgoldman](http://www.wendel.com/dgoldman).

The Labor Commissioner has been empowered to determine if other information that it deems as "material and necessary" should also be disclosed to new employees. The Labor Commissioner was required to publish a notice form that employers could use that complied with the disclosure requirements of Section 2810.5.

The Labor Commissioner has now created a new notice template, a few days before the beginning of the New Year. Click [here](#) to access the form. All employers must complete this notice form (or one that otherwise complies with the requirements of Section 2810.5) and provide it to *new* employees beginning January 1, 2012. Certain employees, however, need not receive these notices, including those that are subject to collective bargaining agreements that expressly provide for the wages, hours and working conditions of the employee, government employees and employees that are exempt from the payment of overtime wages (although it might be advisable to give these notices to all new employees for simplicity and other reasons).

Be aware, however, if the information required by Section 2810.5 changes over time (for example, the employer's workers compensation insurance carrier changes), employers must notify all employees of such changes, in writing within seven days, unless all the changes are reflected on a timely wage statement provided to employees (for example, an employee's hourly rate changes).

## BRINKER DECISION DELAYED

Employers have been waiting for years for the California Supreme Court to render its decision in *Brinker v. Superior Court*, which will instruct California businesses whether they must *ensure* or merely *provide* meal and rest periods for non-exempt employees and, additionally, when such employees must take their meal break within a work day and how often. The Supreme Court heard oral arguments on November 8, 2011 and otherwise would have to render its decision within 90 days, or by February 6, 2012. However, on December 14, 2011, the Supreme Court requested additional legal briefs on the issue whether its decision should be applied prospectively or retroactively. Accordingly, the case will now be deemed submitted for decision 30 days thereafter, on January 13, 2012. Therefore, the 90-day period for the Court to render its decision has been extended to a date no later than *April 12, 2012*.

Employers will likely wait until the Spring 2012 before they will know how the Supreme Court has interpreted California meal and rest period laws and regulations. Be assured that once the *Brinker* decision is announced, we will promptly report the decision and its impact on our clients. If you would like to be placed on our e-mail notice list, or have a colleague who would be interested in receiving the forthcoming decision and analysis, please provide us with contact information to be added to our e-mail notification list.