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LEGAL ALERT

Legal Alert: Not Brinker, But A California Appellate Court Solves the Riddle - Employers Need Only "Provide" Meal Periods Not "Ensure" They Are Taken

11/4/2010

For more than two years, we have been waiting for the California Supreme Court to answer the meal-period question that has clogged our court system with innumerable lawsuits. Must management simply "provide" the opportunity for meal periods or must they affirmatively "ensure" that those meal periods are taken? Well, our local appellate district is tired of waiting. Within the past week, our Court published its own opinion in *Hernandez v. Chipotle Mexican Grill, Inc.*, 2010 Cal. App. LEXIS 1853 (2010), ruling in favor of management.

In the case, plaintiff Rogelio Hernandez ("Hernandez") was an hourly worker for the restaurant chain, Chipotle Mexican Grill ("Chipotle"). After his termination, Hernandez filed a lawsuit against the company alleging meal and rest period violations. Filed as a class action, Hernandez attempted to pursue his claims on behalf of more than 3,000 current employees and hundreds of former employees. When seeking certification of the case as a class action, Hernandez relied on Chipotle's time records revealing a lack of meal periods by employees, which according to his expert, impacted 92 percent of the employees. Hernandez also provided declarations from 23 employees who stated that management denied or interrupted their breaks. In opposition, Chipotle submitted evidence that it had always paid its employees for break periods (and provided free food), and thus the relaxed or inaccurate time keeping it maintained concerning meal periods was insignificant. Chipotle then produced the declarations of 57 employees who stated that they took all of their meal and rest periods, even though they sometimes forgot to clock in and out for them. In addition, sixteen of Chipotle's managers described how they would be informed of inaccurate meal period clock-ins and clock-outs, and their policy was to not correct the records because the employees' pay would not be affected. The trial court sided with Chipotle, and denied Hernandez' motion for class certification.

The Court of Appeal did the same, and affirmed the trial court's ruling. The Court first analyzed the current status of California's meal-period law, acknowledging the "provide" versus "ensure" debate presently before the Supreme Court in *Brinker Restaurant v. Superior Court* and *Brinkley v. Public Storage*. In a bold move, the Court agreed with the trial court's conclusion that the Supreme Court was likely to favor the "provide" standard over the "ensure" standard. The Court opined that requiring employers to

"ensure" meal periods would unduly burden employers, particularly large ones that do not remain in contact with their employees during the day.

The Court then addressed the appropriateness of class certification of the meal and rest period claims. The Court reasoned that the evidence in the case demonstrated a lack of universal practice with regard to break periods. Some employees took them, some did not. Some took them but forgot to clock in and out, while some were not permitted by their managers to take them. In addition, some of the employees only took partial meal periods, and it was unclear why, given the employees' and managers' declarations. And Chipotle's time records did not provide any assistance. As a result, there were too many individualized variables affecting the employees' meal period practices, precluding any class-wide treatment of the workers' claims. It is unclear, however, what the Court would have done if Chipotle had not paid for all of its employees' break periods or if Chipotle's time records were otherwise more reliable.

The Impact of Chipotle?

Chipotle is a game-changer in California, until the Supreme Court silences the opinion (by granting review of the decision) or speaks into existence its own final interpretation of the State's meal-period law. Until then, California employers need not force employees to take their meal periods or ensure that they are taken.

But this newfound freedom for employers is only temporary. Hernandez will most certainly petition the Supreme Court for review, and the Court will likely grant it. Therefore, we will likely have to continue to wait – without interpretative guidance – until the Supreme Court renders a meal-period decision in *Brinker*, hopefully by this time next year.

Even if silenced, the *Chipotle* decision is nonetheless encouraging. It evidences the management-friendly analysis and conclusions more and more courts are making with respect to meal-period claims. It also demonstrates an uneasiness we hope more courts feel concerning class-wide adjudication of meal-period claims. And, of course, we hope the *Chipotle* case evidences some momentum regarding the meal-period issue and foreshadows the coming analysis by the California Supreme Court.

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