

Court Serves Up Brinker Decision; Mostly Satisfying for California Employers

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The much-anticipated and long-awaited decision in *Brinker Restaurant Corp. v. Superior Court* regarding a California employer's duty to employees when it comes to meal and rest periods has come down primarily in favor of employers.

The decision addressed a number of issues, some of which were made clear and some remain mixed:

Meal Periods. The court ruled that, "An employer's duty with respect to meal breaks...is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so."

What if an employee chooses to work during the meal period? The Court found that "The employer that relinquishes control but nonetheless knows or has reason to know that the employee is performing work during the meal period, has not violated its meal period obligations [and owes no premium pay], but nonetheless owes regular compensation to its employees for time worked."

What may be of concern to California employers is the Court's opinion that compliance "may vary from industry to industry, and we cannot in the context of this class certification proceeding delineate the full range of approaches that in each instance might be sufficient to satisfy the law."

To prove compliance, employers should have documents and practices in place that show: (1) a policy of relieving employees of all duty obligations during the meal period; (2) a policy prohibiting managers or supervisors from coercing or encouraging an employee to work during a meal period; and (3) a training program for supervisors and managers on these policies. In addition, employers may wish to institute a reporting process for meal period denials.

Rest Periods. The wage orders provide that employers must allow employees to take rest periods "at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." The Court decided that "major fraction thereof" means more than half, and that employees are therefore entitled to:

- One 10-minute break for work periods lasting 3.5 to 6 hours.
- Two 10-minute breaks for work periods lasting more than 6 hours and up to 10 hours.
- Three 10-minute breaks for work periods lasting more than 10 hours and up to 14 hours.

The Court also rejected plaintiff's arguments requiring employers to provide at least one rest period prior to a meal period, ruling there was no requirement regarding the timing of meal periods and rest periods.

[Link to Original Article](#)

There are numerous other regulatory compliance issues in the *Brinker* decision that California employers need to know. For a full briefing on *Brinker* and how it may affect your company, as well as to discuss the

implementation of strategies to avoid potential litigation, please contact us at (818) 473-5720 or email your request to cbusinesslawreport@tharpe-howell.com.