



Gimme a Break: California Supreme Court Clarifies Meal and Rest Period Requirements

Yesterday, the California Supreme Court in Brinker v. Superior Court (April 12, 2012) gave employers a major, if not complete, victory on the interpretation of California meal and rest period law. Most significantly, the Court held that employers must permit hourly employees to take uninterrupted 30-minute meal periods, but rejected the proposition that employers must "ensure" that employees take such meal periods. The Court also clarified issues relating to the timing of meal and rest periods. In particular, as one victory for the plaintiffs' bar, the Court held that an employee's first meal period must come no later than the end of his or her fifth hour of work.

These holdings are what most anticipated, although in litigating a case last year against the attorney who argued Brinker for the plaintiffs, she appeared to be a "true believer" that the plaintiffs would fully prevail on all presented issues.

By rejecting the "ensure" standard, the Court has made it much more difficult for plaintiffs to certify meal period class action claims, as consideration of individual issues will typically be required to determine if certain class members simply chose not to take an unpaid meal period. Still, employers should continue to maintain their meal and rest period policies, train employees on these policies, and take actions to ensure that the policies are followed. Plaintiffs could still bring class claims alleging that they are discouraged from taking meal periods, that they perform work while off the clock during meal periods, or that meal period timing requirements are not followed. Additionally, full compliance will still be difficult since many hourly employees frankly do not want to take 30-minute unpaid meal periods or do not want to do so when they are scheduled.

Meal Period Rulings

The Court, in rejecting the "ensure" standard, ruled that an employer meets its 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." The Court further held that employers are not required to "police meal breaks and ensure that no work" is performed.

As for timing, the Court ruled that the Labor Code "requires a first meal period no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee's 10th hour of work." The Court thus rejected the holding of some lower courts that the first meal period need only be taken by the end of the sixth hour. On the other hand, the Court also rejected the plaintiffs' proposed "rolling five" standard which could have required an earlier second meal period. (Employers still may obtain waivers of the first meal period if an employee works no more than six hours in a shift. Also, under limited circumstances, an employer may obtain written agreements whereby employees take paid "on duty" meal periods.)

Rest Period Rulings

The Court, in clarifying how often employees are entitled to paid rest periods, ruled that "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." As for timing, employers are "subject to a duty to make a good faith effort to authorize and permit rest breaks in the middle of each work period, but may deviate from that preferred course where practical considerations render it infeasible."

Case law already was clear in rejecting the "ensure" standard for rest periods. While rest period claims typically have been more difficult to certify, the Court actually affirmed class certification of the Brinker plaintiffs' rest period claims, since they did not depend on individual class member circumstances. The plaintiffs argued that Brinker's policy of not authorizing a second rest period unless an employee works more than eight hours violates the clarified rule that employees are entitled to a second rest period after six hours. Moreover, since Brinker did not authorize a second rest period for employees working between six and ten-hour shifts, these employees could not have truly waived their

second rest period. Based on this holding, California employers should ensure that their policies and practices comply with the Court's guidelines.

You may click on the following link to see the full text of the Court's decision: <http://www.courtinfo.ca.gov/opinions/documents/S166350.PDF>.

For more information concerning this decision or any class/collective action questions, please contact [Brad Harvey](#), [Harold Pinkley](#), or any member of our [Class/Collective Action Practice Group](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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