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Employers Catch a Break: California Supreme Court Clarifies Meal and Rest Break Obligations

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On April 12, 2012, the California Supreme Court issued its long-awaited decision in *Brinker Restaurant Corp., et al. v. Superior Court* (“*Brinker*”). For California employers, the key holdings of this case regarding meal period and rest break issues with respect to non-exempt employees are as follows:

1. Employers satisfy their meal period obligation if they relieve an employee of all work duties, relinquish control over activities and permit a reasonable opportunity to take an uninterrupted 30 minute break, and do not impede or discourage the employee from doing so. Employers are not obligated to police meal breaks or ensure no work is performed.
2. Employees who work a shift of more than five hours are entitled to a first meal period by no later than the end of their fifth hour of work.¹ Employees are entitled to a second meal period only if they work more than ten hours. A second meal period must start no later than the end of the 10th hour of work on the shift.² There is no restriction on the number of hours between meal periods as long as these basic timing requirements are satisfied.
3. Non-exempt employees whose shifts exceed 3 ½ hours in a day are permitted to take rest breaks for each 4 hours worked or major fraction thereof. “Major fraction” means more than one-half (i.e., more than 2 hours). In other words, employees are permitted to take one ten minute rest break if their shift exceeds 3 ½ hours up to 6 hours, a second break if their shift exceeds 6 hours up to 10 hours, and a third rest break if their shift exceeds 10 hours up to 14 hours. An employer who has a policy that misconstrues the term “major fraction” and therefore does not provide a second break for a shift exceeding 6 hours is at risk for class action litigation.
4. Although an employee rest break should ordinarily be allowed near the mid-point of each 4 hour period, different factual situations can warrant deviations. As a result, the mid-point standard does not mean that employees must always be permitted to take a rest break before they receive a meal period.

Significantly, the meal period rulings by the Supreme Court essentially adopted the positions being advanced by the employer in this case and the numerous employer groups who submitted Amicus briefs, and thus is a favorable ruling for employers. The Supreme Court also addressed other issues, including the importance of keeping accurate time records, as discussed further below.

¹ However, if the total work period is not longer than six hours, the meal period may be waived by mutual consent of both the employer and employee.

² The second meal period may be waived by mutual consent, provided the employee does not work more than 12 hours, and provided the first meal period was not waived.

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Background

In 2004, the plaintiffs in the *Brinker* case (current and former non-exempt California restaurant employees) filed a putative class action against Brinker Restaurant Corp. (“Brinker”), which owned several restaurant chains, alleging, among other claims, that Brinker violated California’s rest and meal break requirements by: (1) forcing workers to take a meal period early in their shift (typically within the first 2 hours) and thereby providing plaintiffs with their first rest break *after* the meal period and *after* the employees had worked four hours; (2) requiring personnel to work more than 5 hours after the end of a first meal period without providing a second meal period; and (3) not *ensuring* that employees performed no work during meal periods.

The meal period claims arose from what plaintiffs alleged was a common practice in which Brinker allegedly required non-exempt employees to take meal breaks early in their shift—often within the first hour or two. As a result, employees were allegedly forced to work as long as 9 hours (to the end of their 10 hour shift) without being provided another meal period.

The early lunching requirement also allegedly resulted in workers not receiving a first rest break *before* their initial meal period. According to plaintiffs, because Brinker did not schedule rest breaks at or around the mid-point of each 4 hour period worked, an initial rest break was often delayed until the employees had been on the job for as many as 3 ½ or 4 hours. Further, plaintiffs contended that Brinker’s policy provided only that employees would receive a break if their shift exceeded 3 ½ hours, and that such breaks would be provided for each 3 ½ to 4 hour portion of their shift. Under Brinker’s policy, as alleged by plaintiffs, an employee who worked less than 7 ½ hours but more than 6 was not afforded a second rest break.

Meal Break Analysis

In rendering its decision, the California Supreme Court announced that an employer’s obligation is to *relieve* an employee of all duty during an uninterrupted 30-minute period. In holding that employers were not obligated to ensure the employee performed no work during this time, however, the court emphasized that employers may not pressure employees to perform duties in ways that omit breaks or discourage employees in any fashion from taking breaks. The court also stated that employees cannot manipulate the flexibility surrounding meal break requirements to continue or to perform work in order to generate liability on the part of their employers.

The court went further and identified circumstances under which employers might be liable for premium and straight time pay for employees who choose to work during a meal period. If an employer relinquishes control and effectively relieves the employee of all duty for the uninterrupted 30 minute meal period, the worker who nevertheless continues to work *is not entitled to a one-hour meal premium*. But if the employer knew or should have known that the employee was working during a meal period, the employer will be liable for straight time pay for such work performed.³

As to timing of meal periods, the court determined that the language of the controlling statute (Labor Code § 512) and corresponding Wage Orders mandates meal periods based on total hours worked *for the day*. If the employee works a shift in excess of 5 hours, the employer must provide a meal period before the end of the fifth hour. There are two exceptions: (1) if the shift is no longer than 6 hours and the employee voluntarily waives the meal period with the employer’s agreement; or (2) conditions

³ Of course, if the employee in this scenario works a total of more than 8 hours in the workday in which he works through the meal break, the employee is entitled to overtime pay.

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exist to permit an “on-duty” meal period, the employee voluntarily agrees in writing to forego a duty-free meal period, and the writing includes a statement the agreement can be revoked by the employee at any time as required by the applicable Wage Order.

An employee who works more than 10 hours in a day is entitled to a second meal period. The second meal period must begin no later than the end of the 10th hour of work. Again, if the shift is no longer than 12 hours, the employee may voluntarily waive the second meal period with the employer’s agreement, but only if the first meal period was not waived.⁴

Rest Break Analysis

The court also addressed the rest break requirements regarding when an employee is entitled to a rest break and how many breaks during a work day the employee is permitted. Relevant Wage Orders reference a 10 minute rest break for each 4 hours worked *or major fraction thereof*. One exception is provided: an employee whose *total daily work time* is no longer than 3 ½ hours need not be provided a rest break. At the lower appellate level, the Court of Appeal in *Brinker* construed the 3 ½ hour language as defining “major fraction thereof.” According to that interpretation, an employee would only be entitled to rest breaks at the following rate: one break for shifts in excess of 3 ½ up to 7 ½ hours, two breaks for shifts in excess of 7 ½ but less than 11 ½ hours, and so on.

However, the Supreme Court rejected the interpretation of the Court of Appeal and instead held that a “major fraction” of 4 hours is an amount of time in excess of half of 4 hours (i.e., more than 2 hours). Thus, an employee who works more than 3 ½ hours but less than 6 hours is entitled to one rest break, an employee who works more than 6 but no more than 10 hours is entitled to two rest breaks, and an employee who works more than 10 but no more than 14 hours is entitled to three rest breaks. On this issue, the court also determined that a policy that misconstrues the meaning of “major fraction” can expose an employer to class action litigation and liability.

As to timing of rest breaks, the court held that breaks should be provided approximately in the middle of the 4-hours (or major fraction thereof) worked. However, the court also recognized that this obligation was tempered by the words of applicable Wage Orders “insofar as practicable.” Accordingly, employers may deviate from such timing “where practical considerations render it infeasible.” Although the court did not opine as to what considerations might satisfy this standard, it agreed with the Division of Labor Standards Enforcement that there is no universal requirement that a first rest break must always come before a meal break. Instead, it held that as a *general matter* in the context of an eight hour shift, one rest break *should* fall on either side of the meal break; “shorter or longer shifts and other [unspecified] factors that render such scheduling *impracticable may* alter this general rule.” [Emphasis added.]

Record Keeping Requirements

The court’s decision indicates that whether employers maintain clear and accurate time records will have a substantial impact on the success of off-the-clock or meal period claims. The court held: “[T]hat employees are clocked out creates a presumption they are doing no work.” In contrast, a concurring opinion emphasized: “If an employer’s records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided.” Thus, it will be important for employers to keep accurate time records that

⁴ Note that there are further exceptions for healthcare industry workers in Wage Orders Nos. 4 and 5, which are not discussed here.

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reflect not only the start and stop time of each shift, but also the time the employee clocks out and then returns from the meal period. The Supreme Court in *Brinker* also ruled that because *Brinker*'s policy required the employees to keep accurate time records, then the claim by the plaintiff employees that they were required to work "off-the-clock" was individual in nature and not appropriate for class action certification.

Conclusion

While encouraging from an employer's perspective, *Brinker* does not guarantee an end to meal and rest break class action litigation. What *Brinker* does, however, is provide guidance to enable employers to further minimize their risks in this area. That guidance includes updating rest break and meal period policies to ensure compliance with the court's rulings. Employers are also well-advised to more fully explain meal period policies and to train management to ensure no form of coercion effectively prevents or prohibits employees from taking their meal periods. Finally, employers should carefully review their time reporting processes to assure that they have appropriate time records to defend themselves if any litigation ensues.

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