

AFTER A WAIT OF MORE THEN THREE YEARS, the California Supreme Court issued an unanimous, landmark decision which clarifies employer compliance obligations for providing state mandated meal and rest periods. *Brinker Restaurant Corp. v. Superior Court*, 2012 DAR 4615 (April 12, 2012). The decision also addresses important issues involving wage-hour class action lawsuits in general, especially where meal and rest period violations are claimed.

Meal Periods

Labor Code sections 227.6 and 512 and analogous provisions found in each of the Industrial Welfare Commission's Wage Orders, require employers to "provide" a 30 minute uninterrupted meal period to any employee who works a shift lasting five or more hours.

The substantive issue before the Supreme Court was whether "provide" meant that employers merely had to make the meal break available, or did it require employers ensure that each and every meal break is actually taken. The Supreme Court sided with employers on this critical compliance question. Key rulings by the court:

- Employers have three choices if an employee works more than five hours on a shift: (1) give the employee one uninterrupted 30 minute (unpaid) meal break, free from all work, starting any time before the employee's sixth hour of work begins; (2) consent to a mutual waiver of the meal break, but only if the shift does not exceed six hours; or (3) obtain a written agreement for a so-called "on-duty meal period" if the stringent guidelines for such agreements are met.
- If the shift lasts 10 or more hours, then a second meal break must be provided as well. The employee can waive the second meal break, provided the shift is 12 or fewer hours and the employee took the first meal break.
- For a meal period to be compliant, the employee must be free to use the meal period "for whatever purpose he or she desires." The court said that this means that the employee must be allowed to leave the premises during the meal period.
- An employer is not required to "police" its employees to ensure that they actually perform no work during the meal period. Thus, no penalty is required merely because the employee elected to clock in and resume work before the full 30 minutes have elapsed. However, where the employer "knew or reasonably should have known that the worker was working through the authorized meal period," or did not take a full 30 minutes, then the employer is liable for penalties under the Labor Code.
- In *Brinker Restaurant*, the plaintiffs claimed the employer had an "early lunching" practice that resulted in employees working more than five hours after their first meal break. However, the court ruled that employers are not required to provide a "rolling" meal break five hours after an employee's first meal break. Rather, a second meal break is required where the employee works more than ten hours and does not waive the second meal break. In effect, the Supreme Court gave the "green light" for California employers to schedule their employees' meal periods for early in the shift, without being required to give them a second meal period for shifts of ten hours or less.

Rest Periods

Each IWC Wage Order requires employers to "authorize and permit all employees to take rest periods, which ... shall be in the middle of each work period" if possible. Employees must be allowed ten minutes of rest for every four hours of work "or major fraction thereof." The Supreme Court laid out the following rules for compliant rest breaks.

- If a work shift is less than 3½ hours, no rest break is required. If the shift is:
 - Over 3½ hours to six hours = One rest break
 - Over six hours to 10 hours = Two rest breaks
 - Over 10 hours to 14 hours = Three rest breaks
- Nothing in the Wage Orders authorizes when the rest break must be given in relation to a meal period. However, the court noted that "generally for shifts of eight hours, one rest break should be before the meal break and one after."

Class Actions

Brinker Restaurant is a class action lawsuit. The trial judge had certified three different subclasses, based on the plaintiffs' claims for (1) rest period violations, (2) meal period violations and (3) "off-the-clock" work. The Supreme Court's decision did not end the case, but only decided whether it was appropriate for the trial judge to certify all or part of the case for class action treatment. Here is how the court ruled on the class action issues:

- The court upheld the trial judge's certification of the rest period class because *Brinker Restaurant* admitted it had a uniform policy on rest breaks. The court found that this policy violated the Wage Order because it did not provide employees with two rest breaks for all shifts over six hours.
- The meal break class was remanded for further consideration in light of the court's opinion. The trial court's certification of the meal break class was based in part on the erroneous assumption that a meal break is required after five hours of work. This made the class definition overbroad, insofar as it includes employees who took an early lunch.
- The Supreme Court rejected the trial judge's certification of the "off-the-clock" class since the plaintiffs only had individual, case-by-case evidence of this, which is not enough to justify certifying a class.

Recommendations

The overall impact of *Brinker Restaurant* should become clearer as lower courts seek to interpret and clarify the ruling. In the meantime, employers must remain vigilant in complying with California's stringent wage-hour laws. At a minimum, we recommend that employers do the following:

- Disseminate a lawful meal and rest period policy.
- Train managers on the meaning of the policy and the circumstances under which the state mandated penalty compensation must be paid.
- Ensure that start and stop times for all meal periods are recorded on time keeping records (unless all company operations cease during meal periods).
- Develop a program to systematically review compliance with the policy.
- Post the policy near employee time clocks and where other such postings are made.
- Consider obtaining written meal period waiver agreements where such agreements are permitted.
- Any so-called "on-duty meal period" agreements should be reviewed by counsel to insure compliance with the state's strict requirements. ⚡