

July 24, 2008

**Good News!
Meal Break for Employers:
Court Rules That Employers Do Not Need To Ensure
That Employees Actually Take Available Meal Breaks**

It is no secret that wage and hour lawsuits often plague California businesses. When employers attempt to navigate the myriad of laws to ensure compliance, they are faced with conflicting interpretations and confusion regarding their obligations.

On July 22, 2008 a California appellate court issued a pro-employer decision that provides long-awaited guidance to employers regarding their obligations relating to meal breaks and rest periods for employees. In a highly anticipated decision, the court ruled that California law requires employers to “provide” meal and rest breaks to workers, not “ensure” the breaks are taken.

In *Brinker Restaurant Corp. v. Superior Court* several workers filed a class action lawsuit against the owner of Chili’s Grill & Bar, Romano’s Macaroni Grill, and Maggiano’s Little Italy, claiming that 59,000 employees were not provided rest periods or meal breaks, and were required to work off the clock. The Court of Appeal ruled that these issues were not susceptible to class treatment because individual issues predominate over common issues among the employees.

To reach this conclusion, the appellate court defined what it means to “provide” a meal break or rest period under California law:

- Employers cannot impede, discourage or dissuade employees from taking rest periods, they need only provide, not ensure, rest periods are taken;
- Employers need only authorize and permit rest periods every four hours or major fraction thereof and they need not, where impracticable, be in the middle of each work period;
- Employers are not required to provide a meal period for every five consecutive hours worked;
- Employers cannot impede, discourage or dissuade employees from taking meal periods, they need only provide them and not ensure they are taken; and
- Employers cannot coerce, require or compel employees to work off the clock, they can only be held liable for employees working off the clock if they knew or should have known they were doing so.

The appellate court explained that making employers ensure that employees actually take available breaks “would place an undue burden on employers whose employees are numerous It would also create perverse incentives, encouraging employees to violate company meal break policy in order to receive extra compensation under California wage and hour laws.”

The *Brinker* Court rejected the argument that employers are required to police their employees and force them to take meal breaks: “With thousands of employees working multiple shifts, this would be an impossible task. If they were unable to do so, employers would have to pay an extra hour of pay at any time an employee voluntarily chose not to take a meal period, or to take a shortened one.”

Governor Schwarzenegger issued a press release endorsing the *Brinker* Court’s ruling, and stating that the “decision promotes the public interest by providing employers, employees, the courts and the labor commissioner the clarity and precedent needed to apply meal and rest period requirements consistently.”

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Impact of the Court's Decision on Employers

The *Brinker* ruling is a victory for California employers who have sought clarification in an unresolved and highly debated area of wage and hour law. Plaintiffs' counsel has indicated that they likely will seek review by the California Supreme Court and request that the ruling be depublished. Employers may entertain guarded hope, however, that the *Brinker* decision will help to curb class action wage and hour lawsuits involving meal breaks, rest periods, and off the clock work violations. In the meantime, employers should contact legal counsel regarding the effect of the court's ruling on their own policies, practices, and decision making in managing meal and rest break compliance.

This Legal Update is provided as an educational service by Hoge Fenton's Employment Law Group for clients and friends of the firm. This newsletter is an overview only, and should not be construed as legal advice or advice to take any specific action.

For additional information or answers to specific questions regarding your business, please contact Vanessa R. Inman at 408.947.2421 or vri@hogefenton.com.



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