

April 12, 2012

### ***Brinker* Has Arrived: The California Supreme Court Issues Its Long-awaited Decision on Meal Periods and Rest Breaks**

The California Supreme Court just issued its long-awaited decision in *Brinker Restaurant Corp. v. Superior Court*, No. S166350 (April 12, 2012). The case resolves a split among California appellate courts regarding an employer's obligations with respect to providing meal periods and rest breaks to California employees.

Overall, *Brinker* appears to be a win for employers on most of the substantive issues. The Court also addressed some important procedural points regarding the requirements for certifying a class, which in some cases could make it more difficult for employers to defeat class certification. In sum, the Court:

- Held that employers need not ensure that meal periods are taken – they only must provide a meal period;
- Held that employers are not required to provide a meal period for every five consecutive hours worked;
- Explained what it means for employers to provide a rest break for every four hours worked or major fraction thereof;
- Held that employers are not required to provide a rest break before a meal period; and
- Explained the requirements for class certification and upheld the trial court's certification of the rest break subclass and remanded for reconsideration the certification of the meal period subclass.

Here is a more detailed discussion of the Court's holdings:

On the issue of what it means to "provide" an uninterrupted 30 minute off-duty meal period under the California Labor Code, the Court held that an employer satisfies its obligations to "provide" a meal period when it relieves its employees of all duty, relinquishes control over their activities, permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so. The Court leaves open the question of what will suffice to meet this obligation, noting that it may vary from industry to

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industry. That said, the Court makes clear that an employer is not obligated to police meal periods and ensure that no work is performed.

Second, the decision also addresses the timing of meal periods and the so-called “rolling five hour” meal period issue. Many employers allow employees to take their meal period early in their shift so that they will be available during busier periods later in the day. The Court holds the relevant Labor Code provision and Wage Order only requires an employer to provide a first meal period no later than by the end of an employee’s fifth hour of work and a second meal period no later than by the end of an employee’s tenth hour of work. The Court rejected plaintiffs’ argument that the applicable wage order provides additional timing requirements, *i.e.*, a meal period for each consecutive five hours worked.

The Court also discusses an employer’s obligations regarding rest breaks. The applicable wage orders provide that 10 minute rest breaks must be authorized or permitted for every four hours worked or major fraction thereof, except that a rest break need not be authorized if an employee’s total work time is less than three and one-half hours. The Court determined that this means employees are entitled to a ten minute rest break for shifts between three and one-half to six hours in length, two ten minute rest breaks for shifts of more than six hours up to ten hours, three ten minute rest breaks for shifts of more than ten hours up to fourteen hours, and so forth. The Court rejected plaintiffs’ further argument that the rest break must always be provided before a meal period. According to the Court, the only obligation is to provide a rest break in the middle of the work period “insofar as practicable.”

Finally, the Court addressed some critical questions regarding the requirements for certifying a class. The Court reaffirmed the principle that trial courts must resolve legal or factual issues which are necessary to a determination of whether class certification is proper, but that as a threshold matter, courts need not always resolve disputes over the elements of a claim. Thus, where there are legal issues which are relevant to both certification and the merits of an issue, it is proper for a court to evaluate them. Also of note, the Court upheld the trial court’s certification of the rest break subclass and remanded for reconsideration the trial court’s certification of the meal period subclass, suggesting that employers may face difficulty in defeating class certification of these types of cases.



Miller Law Group is holding a special two-part webinar on [April 19](#) and [April 25](#) that will examine the decision and what it means for California employers. For further information about the webinar and to register, [click here](#). In the next few days, we will issue an in-depth analysis that fully explores the Court's decision and its implications for employers going forward.

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