

Management Alert

Qualified Good News On Fight Against Wage Hour Class Action Lawsuits: *Brinker Restaurant Corp. v. Hohnbaum*

In *Brinker v. Hohnbaum*, on October 12, 2007, the California Court of Appeal issued a highly anticipated ruling reversing an order certifying a class alleging various violations of the California Labor Code. Although the court's 42-page opinion currently is unpublished, it should be viewed as a victory for employers defending wage and hour class action lawsuits.

Plaintiffs, food service employees allegedly acting on behalf of more than 59,000 similarly situated current and former California hourly restaurant employees, sued Brinker Restaurant Corporation, the operator of 137 restaurants in California, including Chili's Grill and Bar, Romano's Macaroni Grill, and Maggiano's Little Italy. Plaintiffs alleged (1) rest break violations, (2) meal break and "early lunching" violations, and (3) uncompensated off-the-clock work and time-shaving violations. At issue was whether the lower court had abused its discretion in finding that common issues predominated over individual ones. The Court of Appeal concluded that the lower court abused its discretion in certifying a class.

Rest Break Violations

The court concluded that the rest break claims were not susceptible to class treatment, for two independent reasons. First, as the plaintiffs themselves conceded,

rest breaks can be waived by individual employees, necessitating individualized assessment of whether the employer (whose written policies authorize rest breaks) had denied rest breaks in particular circumstances. Second, the court rejected the plaintiffs' contention that employers must schedule rest breaks in the middle of each work period, because the relevant wage order calls for such a schedule "insofar as practicable." Individualized questions would determine "whether the scheduling of such a rest break was practicable in a given instance." Accordingly, the court below abused its discretion in certifying a rest break class, and class certification should have been denied, with prejudice.

Meal Breaks and "Early Lunching"

The Court of Appeal rejected each claim for failure to provide meal breaks. First, the court disallowed any class claim based on plaintiffs' contention that employers must provide meal breaks on a "rolling five-hour" basis. The court explained that an employer need to provide a 30-minute meal break only once for any work period that does not exceed ten hours; there is no requirement to provide a meal break once five consecutive hours of work have elapsed.

The court also rejected the related contention that Brinker had violated the Labor Code by providing “early lunches” within an hour of an employee’s arrival at work, even though that would mean that the employee would then work in excess of five hours without an additional meal break. Utilizing a “common sense meaning” of statutory language, the court reasoned that a California employer must provide a 30-minute meal break to non-exempt employees who are permitted to work more than *five hours per day*, but need not provide a meal break for every *five hours of work*.

The court was unwilling to rule on plaintiffs’ claim that defendant must ensure that employees take their meal breaks, because the court below had failed to reach that issue definitively. The court did, however, identify the legal controversy: Can the employer merely make available the meal break, or must it actually ensure that the employee takes the meal break? Moreover, the court indicated how it thought the lower court should address the issue on remand. Specifically, the court cited the dictionary definition of “provide” as meaning to make available, and cited a recent federal court ruling, in *White v. Starbucks*, that employers need only offer breaks, not ensure them. Finally, the court noted that the lower court had abused its discretion when it assumed for purposes of class certification that defendant had a “duty to ensure that its hourly employees took the meal breaks it provided to them.” Thus, in directing the court below to determine “whether Brinker had a duty . . . to ensure that its employees actually took the meal periods provided to them,” the court clearly suggested how the court below should rule.

Off the Clock and “Time Shaving”

The court rejected certification of the plaintiffs’ claims that they were required to work off the clock and that Brinker had engaged in the practice of “shaving time from employee payroll records to reflect less than a five (5) hour shift.” As with the rest and meal break claims,

the court chided the lower court for failing to examine the specific elements of the claims to determine if they were amenable to class treatment. Notwithstanding Brinker’s written policy against off-the-clock work, the lower court took two plaintiffs’ declarations at face value, and did not examine whether employees were required to work off the clock, or did so voluntarily. Thus, the court below abused its discretion by certifying the class absent a more searching inquiry on remand.

Efforts are underway to request publication of this decision, which would make it citable in other cases. Meanwhile, the decision stands as a strong, albeit mute, validation of the arguments employers have made to attack class action lawsuits.

If you have any questions concerning this Management Alert, please contact the Seyfarth Shaw LLP attorney with whom you work or any labor and employment attorney on our website www.seyfarth.com.

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