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Client's Meal Period Failure Doesn't Result In Staffing Agency Liability

By Timothy Hix

***Seyfarth Synopsis**: The California Court of Appeal has published an important decision clarifying the employer duty to provide meal periods and the respective responsibilities of staffing agencies and the client companies they serve. Serrano v. Aerotek, Inc.*

The Facts

Norma Serrano worked for Aerotek, a staffing agency that places temporary employees with its clients. Aerotek placed Serrano on a temporary assignment at Bay Bread, a food production facility. In their service agreement, Bay Bread accepted "responsibility to control, manage and supervise" the temporary workers and to comply with labor laws applying to them. Bay Bread set the work schedule, including meal and rest breaks, for the temporary employees that Aerotek supplied.

Before her assignment to Bay Bread, Serrano received Aerotek's employee handbook, which included a policy that temporary workers would be provided with a 30-minute off-duty meal break for any work period of more than five hours, that the meal break would begin no later than the end of the fifth hour of work, and that employees were to inform Aerotek of anything interfering with their ability to take a meal break.

While working at Bay Bread, Serrano, as shown by her time records, missed a compliant meal period on most of the days she worked. The Aerotek on-site manager disavowed responsibility for monitoring whether Aerotek's temporary employee took their meal breaks, and stated that Serrano never complained to him about missing meal breaks. Serrano herself admitted that she was unaware of Aerotek ever preventing her from taking a meal break within her first five hours of work. Bay Bread, meanwhile, considered the Aerotek policy irrelevant because Bay Bread itself provided breaks in compliance with California law.

The Trial Court's Decision

Serrano sued both Aerotek and Bay Bread under Labor Code sections 226.7 and 512 for failing to provide meal breaks. The trial court granted summary judgment to Aerotek, and Serrano appealed.

The Court of Appeal's Decision

The Court of Appeal, in a decision that was originally unpublished, affirmed the summary judgment for Aerotek, holding that Aerotek had provided meal breaks in accordance with its duty as spelled out by the California Supreme Court's *Brinker* decision. The Court of Appeal confirmed that an employer need not "police" meal breaks, and that an employer's mere knowledge that meal breaks are not being taken does not establish liability. The Court of Appeal concluded that Aerotek had satisfied its obligation to provide meal breaks by (1) having a compliant policy, (2) training employees on the policy, (3) requiring employees to notify Aerotek of any non-compliance, and (4) having a service agreement that required its client, Bay Bread, to comply the law concerning meal breaks.

In reaching this conclusion, the Court of Appeal made several observations. First, time records showing a meal-break practice at variance with a meal-break policy does not trigger a duty to see if legal violations have occurred. The Court of Appeal rejected Serrano's argument that such time records create a presumption of violations, as *Brinker* makes clear that an employer's actual or constructive knowledge of a non-compliant meal-break practice does not establish liability.

Second, Aerotek was not vicariously liable for any meal-break violation by Bay Bread. The Court of Appeal rejected Serrano's argument that Aerotek had a "nondelegable duty" to provide meal breaks to the temporary employees assigned to Bay Bread. Aerotek, as the direct employer, had the duty to provide meal breaks and did not claim to have delegated it.

Third, Aerotek would not be liable for missed meal breaks even if Aerotek and Bay Bread were Serrano's joint employers. The Court of Appeal reasoned that one joint employer is not vicariously liable for its co-employer's violation of wage and hour law. Neither the wage order nor the statutes support a conclusion that an employer is liable for the breach of a co-employer's duty.

What *Serrano* Means for Employers

Serrano, previously an unpublished opinion, has now been certified for publication, making it citable in litigation. In the age of the gig economy, *Serrano* shines some much needed light on the relative roles of employers with respect to a temporary workforce.

Serrano clarifies a number of points important to both the provider and the consumer of temporary staffing services. First, both entities should have a written compliant meal-break policy, distributed to all workers, and providing an avenue to report any difficulty with taking meal breaks. Second, the staffing company and client should have clearly defined roles and responsibilities with respect to meal and rest breaks, spelling out who is going to supervise the temporary workers and schedule their breaks.

Serrano provides helpful guidance for all employers, not just those using temporary workers. For one thing, failing to review time records or to investigate missed meal breaks does not prevent an employer from showing that it provided meal periods as required by *Brinker.* Additionally, time records that indicate missed breaks do not create a presumption of a legal violation: the employer's actual or presumed knowledge of missed breaks is irrelevant, because the employer's duty is simply to provide breaks, not to ensure that employees actually take them.

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