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California Supreme Court Gives Employers A Major Break

On April 12, the California Supreme Court issued a unanimous 54-page opinion in its "meal and rest" case, Brinker Restaurant Corp. v. Superior Court. That case had been pending since 2008, when the Court agreed to decide whether employers must ensure that employees take meal breaks, or need only make the breaks available to the employees. The Court was also to address the required timing of meal and rest breaks, and the kind of evidence a plaintiff needs in order to justify class actions for alleged denials of meal break, rest breaks, and pay for work done off the clock.

The Court gave some surprisingly favorable results to employers. Interpreting the requirements of the California Labor Code and Wage Orders, the Court ruled:

- **Meal breaks.** Employers must "provide" their non-exempt employees with 30-minute meal breaks in the sense of relieving the employees of all duty, but need not ensure that they actually cease to work during those breaks.
- **Meal break timing.** Employers properly time meal breaks by providing the first break no later than the end of the fifth hour of work, and the second break no later than the end of the tenth hour of work. (The court rejected the plaintiff's proposed "rolling five-hour rule," by which a violation would occur if more than five consecutive hours of work occur without a meal break.)
- **Rest breaks.** Non-exempt employees are entitled to a single 10-minute rest break for a shift from 3.5 to 6.0 hours in length, two 10-minute rest breaks for a shift of more than 6.0 and up to 10.0 hours, and three 10-minute rest breaks for a shift of more than 10.0 hours and up to 14.0 hours.
- **Rest break timing.** Rest breaks ordinarily should be permitted in the middle of each four-hour work period, but need not be provided before a meal break.

Addressing issues of class certification, the Court held:

- A meal break claim should not have been certified here based on the so-called "rolling five-hour rule," which was legally erroneous.
- The claim for off-the-clock work during meal periods should not have been certified, because the employer's formal policy disavowed off-the-clock work, and because there was no common proof of a uniform policy or practice of off-the-clock work, just anecdotal testimony from a few witnesses.
- A claim for missed rest breaks could be certified on the facts alleged here, on the theory that the employer failed to authorize a second rest break for shifts that were greater than 6.0 hours and less than 8.0 hours; the employer's defense that employees waived a rest break does not arise if the employer failed to authorize the rest break in the first place.

What Does Brinker Mean for Employers?

Meal breaks: Absent an on-duty meal-break agreement or a meal-break waiver, employers must provide an uninterrupted 30-minute meal break, during which the employee is relieved of all duty. An employer need not police meal breaks to ensure that employees are performing no work. If an employee does work during the meal break and the employer knew or has reason to know about it, then the employer would be liable only for straight pay, not the one hour of premium pay owed for a meal-break violation.

Thus, as long as an employer truly provides relief from duty and relinquishes control during the break, the employer satisfies its meal-break obligations. A concurring opinion, however, emphasizes the employer's duty to document meal breaks: if "an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided."

Rest breaks: Employer must permit rest breaks for any employee who works "a majority" of the four-hour period, so that an employee who works a shift longer than 6.0 hours is entitled to a second rest break. Employers must also permit rest breaks in the middle of each four-hour work period, unless practical considerations render that approach infeasible. The court did not say what practical considerations might suffice.

Off-the-clock work: Employers should have formal policies that non-exempt employees are to be paid for all time worked and are not to work off the clock.

Seyfarth Shaw is providing further guidance during its lunchtime webinar on April 18, 2012. For more details, see *www.seyfarth.com/events/webinar-brinker-decision*.

If you have questions, please contact your Seyfarth attorney, Jeffrey Berman at *jberman@seyfarth.com*, or Dana Peterson at *dpeterson@seyfarth.com*.