

## THE BRINKER DECISION PROVIDES SOME GUIDANCE FOR EMPLOYERS RE: COMPLYING WITH MEAL AND REST PERIOD OBLIGATIONS

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The recent California Court of Appeal decision *Brinker Restaurant Corporation v. Superior Court* (4<sup>th</sup> Dist. July 22, 2008) not only takes the wind out of the sails of class-action plaintiff attorneys, it also provides some long awaited guidance for employers.

### Summary of the Case and the Court's Decision.

In *Brinker*, a group of hourly non-exempt employees brought a class action against the restaurant employer claiming that the employer failed to comply with meal and rest period obligations and also required employees to work off the clock. The employees specifically claimed that: 1) the employer's practice of having employees take "early lunches" shortly after starting their shift and then requiring them to work another five to ten hours without receiving another meal period violated Labor Code section 512(a) and the wage orders; 2) they were not provided their rest periods between their second and fourth hour of work, and were not provided the rest period before the first meal period; and 3) they were required to work off the clock when they were clocked out for their meal periods.

The employees argued that the wage and hour violations were amenable for class treatment because the employer's non-compliance with wage and hour requirements could be determined by time card records and the employer's policies and practices. The trial court agreed and granted class certification. The employer petitioned for a writ of mandate to the court of appeal. The court of appeal issued an unpublished decision which went up to the California Supreme Court. The Supreme Court vacated the court of appeal's original decision and transferred the matter back to the court of appeal for reconsideration. It was on reconsideration that the court of appeal concluded that the class certification order from the trial court was erroneous and must be vacated because the trial court failed to properly consider the elements of the employees' claims in determining whether they are susceptible to class treatment. In discussing the elements of the employees' claims, the court of appeal handed down the following encouraging pronouncements:

1. While employers cannot impede, discourage, or dissuade employees from taking rest periods, they need only provide, not ensure, rest periods are taken;

2. 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;
3. Employers are not required to provide a meal period for every five consecutive hours worked;
4. While employers cannot impede, discourage, or dissuade employees from taking meal periods, they need only provide them and not ensure they are taken;
5. While 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;
6. Because the rest and meal breaks need only be “made available” and not “ensured,” individual issues predominate and, [based upon the evidence presented to the trial court], they are not amenable to class treatment; and
7. Off-the-clock claims are also not amenable to class treatment as individual issues predominate on the issue of whether [Brinker] forced employees to work off the clock, whether [Brinker] changed time records, and whether [Brinker] knew or should have known employees were working off the clock.

### Reaction from the Governor’s Office and the Labor Commissioner.

Immediately following the *Brinker* decision, Governor Schwarzenegger issued a statement applauding the decision. The Governor said expressly:

“We are pleased that the California Court of Appeal issued today a decision squarely addressing many of the central issues in dispute concerning meal and rest periods. The confusing and conflicting interpretations of the meal and rest period requirements have harmed both employees and employers. Today’s 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.” (<http://gov.ca.gov/press-release/10273/>)

Also, on July 25, 2008, the Labor Commissioner, Angela Bradstreet, along with the Deputy Chief and Chief Counsel of the Division of Labor Standards Enforcement (DLSE), issued a memo to all DLSE staff advising them of the *Brinker* ruling and directing them to apply the holdings in the *Brinker* decision to all meal and rest period cases brought before the DLSE. (A copy of the memo can be obtained at [http://www.dir.ca.gov/DLSE/Brinker\\_memo\\_to\\_staff-7-25-08.doc](http://www.dir.ca.gov/DLSE/Brinker_memo_to_staff-7-25-08.doc).)

## Conclusion.

While the *Brinker* case and the Governor's and Labor Commissioner's reaction to the case are all good news for employers, a final word of caution is warranted. It is anticipated that the plaintiffs will petition the California Supreme Court for review of the decision. If the Supreme Court grants review, employers will have to wait and see how it rules. Nevertheless, the current state of affairs is that the rules outlined in the *Brinker* case will govern meal and rest period claims brought before the Labor Commissioner (DLSE) and most likely will be followed by other state courts.

*For more information regarding the contents of this article or for assistance in complying with meal and rest period obligations, please feel free to contact any of the employment lawyers at Weintraub Genshlea Chediak: Lizbeth West, Charles Post, or Anthony Daye.*