

## Long-Awaited California Supreme Court Decision Resolves Thorny Meal Period And Rest Break Issues Favorably For Employers

In a long-awaited and ultimately favorable decision for employers, the California Supreme Court served up much needed clarification regarding an employer's wage and hour obligations to hourly workers. In short, employers must:

- “Provide” employees with unpaid, 30-minute meal periods, but need not ensure such periods are taken;
- Provide the meal period after no more than five hours of work in a work shift of up to 10 hours (with limited exceptions), but not every five hours (a theory advanced by the plaintiffs);
- Provide a paid, 10-minute rest break for any work period greater than three and one-half hours up to six hours, and another break during the balance of shifts over six hours and up to 10 hours; and
- Endeavor to provide rest breaks in the middle of the work shift, although deviations from this guideline are permissible.

The court also recognized limitations on employees' ability to pursue class actions where significant individual, rather than class-wide, issues of liability exist and make class actions impermissible.

### BACKGROUND

In *Brinker Restaurant Corp. v. Superior Court* (Hohnbaum), hourly employees of several Brinker restaurant chains filed a class action lawsuit against the chains' owner for allegedly failing to provide rest and meal breaks and forcing employees to work off the clock. The trial court certified a class of nearly 60,000 workers, finding that the issues were common to all class members and could be litigated collectively.

Brinker appealed and the court of appeal reversed, most notably holding that an employer's meal period and rest break obligation is to provide them, not ensure that they are taken. (For further information on the appellate decision, see our [07/23/08 Fenwick Employment Alert](#).) The California Supreme Court, on October 22, 2008, granted review (see [11/20/08 Fenwick Employment Brief](#)).

### CALIFORNIA SUPREME COURT DECISION

Three and one-half years later, on April 12, 2012, the California Supreme Court provided, most importantly, definitive guidance regarding employers' meal period and rest break obligations.

**Meal Period Obligation:** After considering Labor Code Section 512(a) and the applicable wage order, the court concluded that an employer's meal period obligation is to “relieve the employee of all duty for the designated period, but [it] need not ensure that the employee does not work.” The court observed that requiring employers to *force* employees to take meal periods “lacks any textual basis in the wage order or statute” and “may in some instances be inconsistent with the fundamental employer obligations associated with a meal break: ‘to relieve the employee of all duty and [for the employer to] *relinquish control over the employee and how he or she spends the time.*’” (Emphasis added.) The court also confirmed that, once the employer provides the meal period break time, there is no employer violation (or meal period premium owed to the employee) if the employee chooses to work during the meal period, although the employer would be responsible for straight time and any resulting overtime pay if it knew or reasonably should have known that the employee continued working.

**Timing of Meal Periods:** With respect to the so-called “rolling 5” issue, the court further ruled that employers must provide one meal period for a work shift of up to ten hours of work, and not every five hours as urged by the employees. According to

employees, Brinker sometimes required employees to take an early lunch soon after beginning a work shift, followed by six or more hours of work without an additional meal period. Employees urged that an employer must provide a meal period every five hours. Rejecting the assertion, the court held that, for a work shift of up to 10 hours, employers must provide a single meal period after no more than five hours of work, i.e., no later than the start of an employee's sixth hour of work. For a work shift exceeding 10 hours, absent an employee waiver, employers must provide a second meal period after no more than 10 hours of work, i.e., no later than the start of the 11th hour of work. The court explained that nothing in the statute or wage orders required employers to provide a second meal period five hours after the end of the first meal period.

**Rest Break Obligation:** The court also held that “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half hours to six hours in length, 20 minutes [two breaks of 10 minutes each] for shifts of more than six hours and up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” Brinker had argued that the requirement to provide an additional 10-minute rest break after already providing a first break for the first four hours of work did not attach until the seven and one-half hour mark, reasoning that “major fraction” of a four-hour shift was not triggered until the employee worked an additional three and one-half hours. The employees argued that “major fraction” of a four-hour shift was anything over two hours, requiring a second rest break after the six-hour mark; the court agreed that the second break was due after working more than six hours, finding the language of the wage order dispositive on the issue.

**Timing of Rest Breaks:** The court ruled that employers may lawfully require employees to take their rest break after an early lunch (and not before the meal period). Employees urged that it was impermissible for Brinker to require them to take an early lunch, followed by a later rest break after the meal period. The court explained that employers must make a good faith effort to authorize and permit a rest break in the middle of each work period, “but may deviate from that preferred course where practical considerations

render it infeasible.” Accordingly, where the meal period occurred early in the work shift, of necessity the rest break must occur after the meal period. The court opined that neither the text of the law nor logic dictated that the rest break must occur before the meal period. In the context of a standard eight-hour shift, the first rest break should normally occur in the morning before the mid-day meal period, and the second rest break should occur in the afternoon after the meal period. However, “[s]horter or longer shifts and other factors that render such scheduling impractical may alter this general rule.”

**Class Certification:** On the issue of class certification, while it appears employees will be permitted to pursue at least their rest break and likely their meal period claims on a classwide basis, the court continued to restrict and show careful attention to the suitability of class treatment. Accordingly, it de-certified the “off-the-clock” class through which employees claimed Brinker forced them to work without pay while purportedly on meal period breaks or shaved time off employee timecards. In contrast to other claims of a class-wide policy or practice, the evidence showed only that Brinker had a policy of requiring meal periods and that the employees had clocked out (creating a presumption that the time records were accurate), such that liability on the claims must be shown on an individual, employee-by-employee basis. Thus, common questions did not predominate for the “off-the-clock” claims, making them unsuited for class treatment.

## CONCLUSION AND TAKEAWAYS

The court set forth a practical and common sense interpretation of the “provide,” “rolling 5” and rest break issues in a positive way for California employers, especially those with a significant hourly workforce. That said, *Brinker* confirms that employers may not turn a blind eye when, despite being “provided” meal and rest breaks, employees continue to work through those breaks. Indeed, in some respects, *Brinker* arguably compels employers to exercise even greater diligence to achieve legal compliance with meal period and rest break obligations.

For instance, where an employer is aware that an employee worked through a “provided” meal period, the employer must compensate the employee for the additional time worked and any resulting overtime. To avoid such obligations, employers will need to counsel the employee about the reasons for meal and rest breaks and encourage the employee to take them, and take more aggressive measures if the problem persists.

Furthermore, the court left open the possibility of a certified meal period class, and, without question, class actions continue to pose risks for employers whose policies and/or practices violate an employer’s rest break and meal period obligations.

We encourage employers to take this opportunity to review their meal period and rest break policies and payroll practices to confirm legal compliance with *Brinker*. Further, and of equal importance, employers should (a) communicate their policies to employees so there can be no misunderstanding of the right of employees to take rest breaks and meal periods but at the same time prohibit them from incurring additional pay obligations, (b) train managers to properly supervise and schedule employee rest breaks and meal periods, and (c) ensure the policies are followed by all and properly enforced. Having legally compliant policies and consistently following and enforcing them is not only a best employment practice, but also a helpful tool if the employer must defend against individual or class action meal/rest break claims.

*For more information on these or related matters, please contact:*

Daniel J. McCoy, Partner and Co-Chair,  
Employment Practices Group  
(650.335.7897 – [dmmcoy@fenwick.com](mailto:dmmcoy@fenwick.com))

Allen M. Kato, Associate,  
Employment Practices Group  
(415.875.2464 – [akato@fenwick.com](mailto:akato@fenwick.com))

Sandra L. M. Riley, Associate,  
Employment Practices Group  
(650.335.7170 – [sriley@fenwick.com](mailto:sriley@fenwick.com))

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