

## TAKE A BREAK: MEAL AND REST BREAK COURT RULINGS DEMAND CAUTION FROM FRANCHISE EMPLOYERS

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Almost five years ago, in April 2006, nearly 59,000 employees obtained class certification in a lawsuit claiming that Brinker Restaurant Group violated California labor laws by failing to ensure that its non-exempt employees took meal and rest breaks. In July of 2008, the appeals court vacated the class certification based upon a finding that employers need not ensure that meal and rest breaks are taken. The California Supreme Court then vacated the decision and granted review on October 22, 2008. Much to the chagrin of California employers and employees seeking clarity on the issue, the Supreme Court has yet to issue its ruling in *Brinker Restaurant Group v. Superior Court*.

The Supreme Court's over two year delay in issuing a ruling in *Brinker* has allowed the Second Appellate District to weigh in as to whether California employers must simply provide non-exempt employees with their statutory meal and rest breaks or if they must take the added step of ensuring that the employees take them. Although uncertainty will remain until the Supreme Court rules in *Brinker*, the Second Appellate District's ruling in *Hernandez v Chipotle Mexican Grill* provides hope that the Supreme Court will side with employers in finding that meal and rest breaks need only be provided to employees.

In *Chipotle*, the appellate court upheld the trial court's denial of class certification to employees who claimed they had not received their breaks. Both the trial and appellate courts denied the class certification and in so doing utilized the less onerous provide meal and rest breaks standard. The

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**Grace Y. Horoupian**

Co-Regional Managing  
Partner

**949.798.2145**

courts reasoned that if employers must merely provide breaks then an inquiry as to why certain employees did not take them must be taken. The courts found that having to inquire why certain employees did not take advantage of the breaks provided was too individualized for class treatment.

Waiting for a ruling on *Brinker* that clarifies the meal and rest break issue may as the adage says be the "hardest part" but if employers ignore favorable rulings such as *Chipotle* and continue to prepare for the worst it will not be the "costliest part."

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