

CALIFORNIA COURT HOLDS THAT PROSPECTIVELY SIGNED MEAL PERIOD WAIVERS ARE ENFORCEABLE: 4 STEPS YOU CAN TAKE TO MAXIMIZE YOUR DEFENSES

Insights
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The California Court of Appeal just handed employers a wage and hour win by ruling that meal period waivers prospectively signed by non-exempt employees are enforceable if certain criteria are met. The April 21 decision in *Bradsbery v. Vicar Operating, Inc.* provides employers with a solid game plan to approach meal period waivers at their workplaces. Below is a quick review of the case and four steps you should consider to take advantage of this positive decision and get the most out of your meal period waivers.

How We Got Here and Why It Matters

In [*Bradsbery v. Vicar Operating*](#), two former employees – La Kimba Bradsbery and Cheri Brakensiek – who worked for a network of veterinary hospitals, Vicar Operating, Inc., alleged Vicar violated California wage and hour law. They launched a class action lawsuit against their former employer arguing that the company improperly handled their meal periods.

- They alleged Vicar required them and others to work five-to-six-hour shifts without providing a duty-free 30-minute meal period – and therefore should have paid them “premiums” for missed meal periods.
- A “premium” under California law is a sort of penalty calculated as one hour of pay at the employee’s regular rate of pay.

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- In the class action context, the potential exposure arising out of these meal period claims can be significant.

The Arguments in a Nutshell

In its defense, Vicar argued that Bradsbery, Brakensiek, and all other similar employees waived their right to these meal periods. It pointed to signed written agreements that prospectively waived all waivable meal periods throughout their employment. The waivers read:

I hereby voluntarily waive my right to a meal break when my shift is 6 hours or less. I understand that I am entitled to take an unpaid 30-minute meal break within my first five hours of work; however, I am voluntarily waiving that meal break. I understand that I can revoke this waiver at any time by giving written revocation to my manager.

Bradsbery and Brakensiek argued that these waivers were not enforceable, particularly since they were one-time waivers that the employer wanted to apply throughout their employment. They argued that waivers must be obtained on a per-shift basis and only after they or other employees were scheduled to work a particular shift for them to be valid. Up until this decision, it was unclear whether one-time waivers are enforceable or not, or whether waivers must be obtained from employees on a more frequent basis.

Court Upholds Meal Period Waivers

The trial court sided with the employer on the issue, but Bradsbery and Brakensiek appealed. Fortunately, the Court of Appeal agreed with the trial court's ruling on April 21 and held that revocable, prospective meal period waivers signed by employees are enforceable in the absence of any evidence the waivers are unconscionable or unduly coercive.

4 Proactive Measures Employers Can Take to Maximize the Enforceability of Meal Period Waivers

The Court of Appeal's ruling in *Bradsbery* is significant because it reinforces that employers might be able to substantially reduce their potential liability if they implement compliant meal period waivers. If you have not put meal period waivers for non-exempt employees into place in California, consult your FP counsel about implementing



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them so you can maximize your ability to enforce them. In light of this decision, consider taking the following four steps:

1. Implement a written standalone waiver. The court did not address whether an oral waiver is enforceable, or if a waiver contained within an employee handbook would be enforceable. Given this ruling, it's good practice not to take chances. We now know that a prospective written waiver signed at the outset of employment can be enforced, so you should follow this guidance. However, remember that meal period requirements and waivers may vary by industry according to the applicable wage orders. Make sure your meal period waivers are audited by counsel to evaluate compliance with the Labor Code and applicable wage orders.

2. Consider having a waiver(s) for both the first and second meal periods. The court in *Bradsbery* only addressed meal period waivers pertaining to a first meal period, but the logic in this decision arguably also applies to second meal period waivers. Some employers may actually benefit more from the latter. Most wage orders provide that an employee can waive a second meal period if the employee works more than 10 hours but less than 12 hours total, and they took a compliant first meal period earlier in the shift.

3. Properly inform employees when presenting a meal period waiver. Meal period waivers might not be enforceable if the employee unknowingly entered into the agreement, the employee was coerced into signing the waiver, or the employee cannot freely revoke the waiver at any time. You should communicate meal period waivers to employees in a simple and clear manner, with language explaining what the employee must do if they want to revoke it (for example, provide written notice of the revocation to HR). Further, you should not pressure, coerce, or force employees into signing waivers. Mutual consent between you and the employee is required for a valid waiver.

4. Don't retaliate. Employees have the right to revoke a written meal period waiver (or to decline to sign a waiver) without retaliation from their employer. If one of your employees chooses to revoke their waiver, make sure your managers know not to treat them differently, even if the revocation creates an additional administrative or managerial headache for your organization.

Conclusion

Fisher Phillips can assist in addressing these and other wage and hour issues. If you have any questions regarding this recent ruling or other employment-related issues your company may need to address, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our California offices](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.