Appeals Court Decision Provides Clarity to Law Governing Meals and Rest Periods

Insights
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A California appellate court has handed down a long-awaited decision addressing legal standards for employee claims including meal and rest period violations. The court also overturned legal rulings regarding the employees' "off-the-clock" claims. *Brinker Restaurant Corp. v. Superior Court.*

The decision is an important one and has been lauded by Gov. Schwarzenegger and others as providing needed clarity to this much-litigated area of the law.

Background
In California, employees have a protected right to enjoy *meal periods*. Employees working more than five hours are entitled to a 30-minute "off duty" meal period. Employees working more than 10 hours are entitled to an additional 30-minute "off duty" meal period.

California employees are also entitled to *rest periods* during every four-hour period of work (or "major fraction" of four hours). Employees who are denied their meal or rest periods are entitled to one hour of pay as compensation for the loss. Subject to some exceptions, employees are generally entitled to compensation for all hours worked, regardless of whether the hours are documented.

Litigation has resulted from the disputed meanings of the regulations regarding meal and rest periods. Notably, debates have arisen regarding *when* the meal and rest periods should be taken and under what conditions they can be waived. One of the most heated subjects has been whether employees must be forced to take their meal periods and rest breaks even if they do not want to take them, and whether an employer must pay the premium when the employee voluntarily chooses to skip a meal or rest period. Employees also frequently make exorbitant claims for hours worked they have never documented.

In a lengthy decision, the court set out the legal standards that must be applied to these claims.

The Rulings

1. Employers need only provide rest periods – not ensure that they are taken.
The employees argued that their employer, a restaurant company, was required to ensure that the rest periods are taken. The court rejected this requirement, reasoning that they need only be

provided to the employees. The court explained that employees need only be "authorized and permitted" to take rest breaks, not forced to take them. The court further explained that "providing" the rest periods necessarily means that the employer cannot "impede, discourage or dissuade" employees from taking them.

2. Rest periods need not be in the middle of each work period.
On a technical note, the court ruled that rest periods need not be taken in the middle of the work period if that would be "impracticable." The court also clarified that the phrase "major fraction thereof" means the time period between three and one-half hours and four hours. The court rejected a 1999 Labor Commissioner's opinion that imposed a stricter requirement. Confusion had arisen from the differing standards.

3. Employers are not required to provide a meal period for every five consecutive hours worked.
The Brinker employees complained about being provided their meal periods within their first hour of work in the restaurants, but then required to work for more than five additional hours without being provided a second meal period. They demanded a meal premium for allegedly being *denied* a second meal period, even if their total hours worked for the day were less than 10. This theory followed the "rolling five hour" rule adopted by the Labor Commissioner which would require a second meal period even if the employees have not worked more than 10 hours for the day.

The court flatly rejected this rule as being contrary to the plain meaning of the Labor Code and California Wage Orders.

4. Employers need only provide meal periods – not ensure that they are taken
The employees also argued that the meaning of "provide" was that the employer must "ensure" that the meal periods are taken. The court rejected this argument. Similarly, the court ruled that, to satisfy the public policy, "provide" does not mean to force or ensure, but only to schedule or make available, the meal periods, which also requires that the employer will not do anything to prevent or discourage them.

An employee remains free to reject a meal period that was made available. The court made clear that employers are not required to "police their employees and force them to take meal breaks ... an impossible task."

5. Employers are liable for employees working off the clock only if they knew or should have known that they were doing so.
Lawsuits have resulted from disputes regarding alleged "off-the-clock" work, where employees complain that they were asked by their supervisors to spend time performing duties that is not recorded on their time sheets.

The court reasoned that in order to determine the validity of each claim, specific proof was required to show whether the manager had authority to instruct the employee to work off the clock, whether the employee was actually working off the clock, the manager's knowledge that the employee

performed the work, and if applicable, the reason the employee did not make a claim to be compensated.

Reaction to the Decision

On July 23, 2008, the day after the *Brinker* decision, Gov. Arnold Schwarzenegger released a statement applauding the decision as clarifying the law against the backdrop of many "confusing and conflicting interpretations of the meal and rest period requirements" which he said "harmed both employees and employers." The California Labor Commissioner, Angela Bradstreet, has instructed all staff of the Division of Labor Standards Enforcement to apply the *Brinker* decision to all pending matters.

Although the *Brinker* decision appears to have gained strong support by the Schwarzenegger administration, the decision is subject to review by the California Supreme Court. This case is very good news for California employers because it interprets the regulations to provide a fair standard which benefits both employers and employees. And finally, the case should also discourage expensive lawsuits against employers which have flourished under the various conflicting and erroneous past interpretations of the law.

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