



# California Supreme Court Hands Down Major Decision On Meal And Rest Periods

Insights

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On April 12, 2012 the California Supreme Court clarified the meal- and rest-period laws, as well as standards for class certification for these claims, and for off-the-clock claims. This case has been pending before the court since 2008, and the legal impact of the decision is far reaching. *Brinker Restaurant Corp. v. Superior Court of San Diego*.

## Provide Time But Don't Force It

On the meal-period issue, the court clarified that California employers generally are required to *provide* a 30-minute, uninterrupted, duty-free meal period, to commence no later than after five hours of work. Similarly, a second meal period must commence no later than after 10 hours of work. By using the word "commence," the court made clear that the meal period need not be completed before the employee had worked either five or 10 hours.

In doing so, the court rejected the employee's "rolling-five" argument, which stated that a second meal period must commence no later than five hours after the first meal period ended. The argument meant that the second meal period would have to commence before the employee had actually worked 10 hours if the employee had completed the first meal period early in the day. The court explained that this view was not supported by the legislative history nor the express wording of the current laws. The court made clear that the current regulations do not prevent employees from taking meal periods early during the first five hours of work.

Probably the most contested issue concerned whether an employer's duty to "provide" the meal period means to simply make it available or to ensure that the meal period is actually taken. The court held that an employer's obligation is to relieve its employees of all duty during a meal period and that employees will then be at liberty to use the meal period time for whatever purpose they desire. The employer cannot pressure an employee either to work during the meal period or to skip it. Employees who are required to work during a meal period in violation of the meal period laws are entitled to an additional premium wage of one hour at the employee's regular rate of pay.

But the court further ruled that "the employer need not ensure that no work is done" during the provided meal period. Moreover, if an employee actually does choose to work during a meal period, with no coercion from the employer to do so, no violation has occurred, and the employee is entitled only to "straight wages" if the employer has constructive knowledge or reason to know that the work

was performed. Employers should consult legal counsel regarding the proper interpretation of "straight time" wages under both state and applicable federal laws depending on the facts of each case. This ruling makes clear the employer's need to promulgate and enforce written record keeping requirements in relation to employees' record of hours worked.

### **The Rest Of The Story**

On the rest-period issue, the court clarified that employees are entitled to 10 minutes of rest for shifts between 3 ½ to 6 hours in length, 20 minutes for shifts of more than 6 hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on. This view has been traditionally enforced by the California Labor Commissioner. The court explained that there was no requirement that a rest period necessarily had to be scheduled before and after a meal period, although it noted that care should be taken to follow the timing standards for each separate category (meal or rest period). Finally, the court made clear that in order for an employee to effectively waive rest periods, employees must be specifically informed regarding their entitlement to rest periods.

### **The Class Issues**

With regard to class certification, the actual results were split, with the court first ruling that the trial court erred in certifying the class of employees allegedly working "off-the-clock" because there was no evidence of common policies by the employer requiring employees to work off the clock. The court then found that certification was properly granted on the rest period claims due to evidence of common policies by the employer. And finally, the court sent the meal period claims back to the trial Court to determine whether they could be properly certified.

The failure of the majority of the justices to follow the concurring opinion that determined that class certification should be granted, regardless of whether factual questions on how much damages each class member should receive predominated, suggests a continued discord as to the viability of recent appellate decisions on these issues.

This decision emphasizes the importance of properly scheduling and documenting meal periods, carefully drafting policies informing employees of their entitlements to meal and rest periods, and developing accurate timekeeping policies which are supervised by management. Because this decision will not prevent continuing class actions on these issues, employers should also develop strategies for preventing and defending class actions by conferring with legal counsel.

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