



**SUE
BENDAVID**
ASK THE LAWYER

Court rules for firms on breaks

Resolving a long-standing dispute over working conditions, the California Court of Appeal has issued a ruling that is very favorable to employers.

The case centers on a lawsuit filed by employees against Brinker Restaurant Corp., claiming they were denied rest and meal breaks and were forced to work "off the clock."

In its ruling, the court said that employers cannot prevent or discourage employees from taking rest and meal breaks, but that they need only provide — not ensure — that the breaks are actually taken.

The court also said that employers must authorize rest periods every four hours, but that the breaks don't necessarily have to be in the middle of each work period.

This latter ruling represents a major departure from previous rulings issued in other cases and by the Labor Commissioner's Office.

Previously, if an employee worked at least five hours before taking a meal break, the employer owed the worker an additional hour's pay, even if the employee delayed the break voluntarily.

On the third issue, the court ruled that employers cannot require or compel employees to work off the clock, but can be held liable for the activity only if they knew or should have known the employee was doing so.

Finally, the court concluded that because rest and meal breaks need only be "made available" and because off-the clock claims are fact-driven, the claims made in the suit were not amenable to class-action treatment.

In its decision, the court commented on what employers have been saying now for years.

"Requiring enforcement of meal breaks would place an undue burden on employers whose employees are numerous," the ruling said. "It would also create perverse incentives, encouraging employees to violate company meal break policy in order to receive extra compensation under California wage and hour laws."

While employers can consider the Brinker decision a victory, employees can view Brinker as giving them flexibility in taking breaks at more convenient times.

Many labor lawyers feel the decision will be appealed to the California Supreme Court. In the meantime, employers should continue to provide paid 10-minute breaks for every four hours worked and a 30-minute meal period before an employee completes five hours of work.

Sue Bendavid is a member of the San Fernando Valley Bar Association. She specializes in employment litigation and counseling.