

# Brinker Ruling Gives Employers Rest Break Flexibility

After a long-standing dispute, the California Court of Appeal just issued a very favorable ruling for employers in what will soon be called the "Brinker" case. In *Brinker Restaurant Corp. v Superior Court*, restaurant employees sued their employer for alleged failure to provide rest and meal breaks. The employees also claimed the restaurant forced them to work "off the clock."

In the Brinker case, the Court resolved three important issues that will benefit employers and give both employers and employees a bit of breathing room and flexibility throughout the workday. The Court's ruling centered on what it means to "provide" employees with meal breaks and rest breaks. The Court also decided when liability may be imposed against an employer when its employees work "off the clock."

Resolving all three issues favorably for employers, the Court reversed an order certifying a class in a class action lawsuit.

On the rest break issue, the court concluded that, "...while employers cannot impede, discourage or dissuade employees from taking rest periods, they need only provide, not ensure, rest periods are taken..." The Court also concluded "...employers need only authorize and permit rest periods every four



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hours or major fraction thereof and they need not, where impracticable, be in the middle of each work period..."

With respect to meal breaks, the Court stated that "...while employers cannot impede, discourage or dissuade employees from taking meal periods, they need only provide them and not ensure they are taken..."

This latter ruling represents a huge departure from previous rulings issued both from the Labor Commissioner's Office and from other appellate decisions. Prior to this decision, if an employee took a meal break after working five (5) hours and one (1) minute (or later), then the employer would owe the employee a meal period penalty of an additional hour's pay, even if the employee did this voluntarily. The same penalty would apply if the employee's lunch period were just under 30 minutes (e.g., a meal period penalty automatically applied if the lunch break was 29 minutes long, or less).

On the issue of "off the clock" work, the Court ruled that "while employers cannot coerce, require or compel employees to work off the clock, they can only be held liable for employees working off the clock if they knew or should have known they were doing so."

Finally, the court concluded that because the rest and meal breaks need only be "made available" and not "ensured," and because off-the clock claims are so fact-driven, individual issues predominate and none of these claims are amenable to class action treatment.

In its decision, the Court commented on what employers have been saying now for years – since the meal and rest period rules were first passed – that "[r]equiring enforcement of meal breaks would place an undue burden on employers whose employees are numerous... 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."

The Court held "that public policy does not support the notion that meal breaks must be ensured. If this were the case, employers would be forced to police their employees and force them to take meal breaks. With thousands of employees working multiple shifts,

this would be an impossible task. If they were unable to do so, employers would have to pay an extra hour of pay any time an employee voluntarily chose not to take a meal period, or to take a shortened one."

The Brinker decision has far-reaching implications and employers can consider the decision to be a significant victory. Similarly, employees can view Brinker as providing them flexibility.

Many employment lawyers feel the decision will be appealed to the California Supreme Court. Should this happen, the Brinker case will no longer be citable as legal authority. So, in the meantime, employers would be well advised to continue their current practices of forcing employees to take duty-free 30 minute meal periods before working five hours of work and authorizing and permitting employees to take paid ten minute rest breaks for every four hour work period (as close as practicable to the middle of each 4-hour work period).

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