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CALIFORNIA SUPREME COURT CLARIFIES EMPLOYERS' MEAL AND REST BREAK OBLIGATIONS, ISSUING LONG-AWAITED *BRINKER* DECISION; OVERRULES CERTIFICATION OF OFF-THE-CLOCK CLAIMS

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The California Supreme Court has issued its long-awaited ruling on meal break and rest break class actions, providing employers significant guidance regarding their obligations under the California Labor Code and related wage orders. (*Brinker Restaurant Corporation et al. v. Superior Court of San Diego County*, decided April 12, 2012.) This client alert provides an overview of the highlights of the Court's decision and what they mean for corporate employers.

The plaintiffs in the *Brinker* action filed a putative class action, seeking to represent hourly employees at the defendant's restaurants. Plaintiffs claimed that they were not provided mandatory rest breaks and were not paid premium pay in lieu of their rest breaks. Plaintiffs also claimed that they were not provided mandatory meal breaks and that they were forced to take their breaks on an improper schedule. And finally, Plaintiffs claimed that they were required to work off-the-clock during meal breaks and subjected to time-shaving, or alteration of their time records to misreport time worked.

In its decision, the California Supreme Court addresses substantive issues relating to the meal and rest break claims and also rules on important procedural class action aspects of the case.

Meal Breaks

The most discussed aspect of the *Brinker* case – and what most employers and practitioners have been awaiting – is the ruling on meal break issues. The Court has made clear its interpretation of the law regarding an employer's duty to "provide" an off-duty meal break. Briefly, the employer's obligation under the law is to "relieve the employee of all duty for the designated period, but [the employer] need not ensure that the employee does no work." In other words, employers do not have to "police" breaks and make sure that employees are actually refraining from work during the times that they are relieved of job duties.

The Court also addresses the situation where an employer is aware that an employee is working during meal breaks. Even under this scenario, the employer is not liable for premium pay for violating the wage order, unless the employer impeded or discouraged the employee from taking the meal break. (The employer would, however, need to pay the employee straight-time – *i.e.*, treat the hours as compensable time.)

As to timing, an employer must allow a first meal period after no more than five hours of work, and a second meal period must be permitted after no more than ten hours of work. The Court rejected the plaintiffs' argument there can be no more than five hours between two meal periods. So long as the second meal period is allowed before the employee has completed ten hours of work, the time between the two meal periods is not material.

Rest Breaks

The Court's substantive rulings on rest periods are relatively straightforward.

First, regarding the number of rest breaks an employee is entitled to, the Court clarifies the language of the applicable wage order, as follows:

> "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."

Next, the Court addresses Plaintiff's argument that employers have a legal duty to permit a rest break before an employee's first meal period. The Court rejected this argument as unsupported by the language of the wage order. The Court agrees with the position of the Department of Labor Standards Enforcement that, in the context of an eight-hour shift, "'[a]s a general matter,' one rest break should fall on either side of the meal break." But the Court notes that "[s]horter or longer shifts and other factors that render such scheduling impracticable may alter this general rule."

To the extent possible, employers are wise to continue to follow the DLSE's guidance regarding the timing of rest breaks. But the *Brinker* decision soundly rejects the notion that it is *per se* illegal to have a meal break as the first break of the day.

Class Certification Considerations

Though the widespread focus on *Brinker* has been a result of the meal and rest period aspects of the case, the *Brinker* decision also contains some interesting guidance on class certification issues.

First, the Court discusses how a trial court is to address disputed legal theories in the context of class certification. Like most or all courts, the Court first notes that the class certification decision is a procedural mechanism "that does not ask whether an action is legally or factually meritorious." But the Court adds that it is appropriate to examine the merits to, for example, "determine whether the elements necessary to establish liability are susceptible to common proof." Such a "peek" at the merits must be limited to the issues closely tied to class certification – but if "the propriety of certification depends upon disputed threshold legal or factual issues," then the court "must" resolve them.

Second, the Court upholds certification of the rest break claim, because Brinker had a uniform rest break policy and, in theory, that policy might not have allowed a second rest break soon enough in the day. In other words,

because the defendant's policy provides for rest breaks "each four hours" without clarifying that a second break becomes due after the *sixth* hour, the Court found it was possible that Brinker's uniform rest break policy was to not allow subsequent rest breaks at the appropriate rates discussed above. Based on this aspect of the *Brinker* decision, employers are strongly encouraged to examine their policies and to ensure they expressly provide for rest breaks on a schedule compliant with the *Brinker* decision's guidance. The same is true with respect to policies discussing meal breaks.

Third, the Court remands the issue of class certification as it relates to meal break claims, noting that the decision may have been based on a flawed understanding of the timing requirements or a misunderstanding of the employer's duty to provide such breaks.

Finally, and perhaps most importantly for future wage-and-hour class actions, the Court addresses the issue of class certification as it relates to plaintiffs' claims of off-the-clock work during meal periods. The court overrules class certification, concluding there was "neither a common policy nor a common method of proof apparent" to show Brinker required its employees to work during meal periods. In the Court's words:

> "Nothing before the trial court demonstrated how this could be shown through common proof, in the absence of evidence of a uniform policy or practice. Instead, the trial court was presented with anecdotal evidence of a handful of individual instances in which employees worked off the clock, with or without knowledge or awareness by Brinker supervisors. On a record such as this, where no substantial evidence points to a uniform, companywide policy, proof of off-the-clock liability would have had to continue in an employee-by-employee fashion, demonstrating who worked off the clock, how long they worked, and whether Brinker knew or should have known of their work. Accordingly the Court of Appeal properly vacated certification of this subclass."

Conclusion

The *Brinker* decision is a favorable decision for employers, finally making clear that existing wage orders do not require policing of meal break activities. And it also provides good guidance on the number of rest periods employers must provide their employees. Overall, this decision should have a positive impact on the total number of class actions being filed in California alleging meal and rest break violations.

However, employers should (i) take this opportunity to examine their policies and make sure they are expressly compliant with the meal and rest period obligations described in the decision; and (ii) remain vigilant regarding their policies, payroll records, and potential off-the-clock work. Though favorable, this decision does not slam the door shut. Wage-and-hour class actions, including meal and rest break claims, will not be going away for good any time soon.
