The California Supreme Court Clarifies Meal and Rest Period Obligations

The California Supreme Court recently issued the decision *Brinker Restaurant Corporation v. Superior Court* (2012) ___ S.Ct. ___ (2012 WL 1216356) clarifying an employer's duty to provide non-exempt employees meal and rest periods and reminding employers to record and keep those wage and hour records. The *Brinker* decision offers welcome relief to private sector employers that must comply with state meal and rest period requirements. Public agencies have traditionally been exempt from these requirements. As a result, the break standards established in *Brinker* have limited impact in the public sector.

For the better part of a century, California law has guaranteed to employees wage and hour protection, including meal and rest periods. In 2000, however, both the Legislature and the Industrial Welfare Commission (IWC) adopted for the first time monetary remedies for the denial of meal and rest breaks. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094.) These remedies engendered a wave of wage and hour class action litigation, including the instant suit in which hourly nonexempt employees sued their employer, Brinker Restaurant Corporation and their affiliates ("Brinker").

Brinker owns and operates restaurants throughout California, including Chili's Grill & Bar and Romano's Macaroni Grill. The lawsuit brought by Brinker's employees alleged that Brinker failed to provide mandatory rest and meal breaks, failed to pay premium wages in lieu of those rest or meal breaks, required employees to work off-the-clock during meal periods and unlawfully altered employee time records to misreport the amount of time worked and break time taken.

The California Supreme Court held that an employer's obligation is to relieve its employee of all duties during meal or rest periods, with the employee thereafter at liberty to use the meal or rest period for whatever purpose he or she desires, but the employer need not ensure that employees take such breaks.

Rest Periods

The *Brinker* decision sets forth the following standards for employee rest periods:

- No break for shifts less than 3.5 hours;
- One 10 minute break for shifts between 3.5 and 6 hours;
- Two 10 minute breaks for shifts of more than 6 hours and up to 10 hours; and
- Three 10 minute breaks for shifts of more than 10 hours and up to 14 hours.

While rest breaks should generally be taken before and after a meal break, the court held that sequence is not required if not practical.

Meal Periods

Regarding meal periods, *Brinker* holds that an employer need only provide an uninterrupted 30-minute break free from work, and it must not impede or discourage employees from taking such a break. The employer is not obligated, however, to police meal breaks and ensure no work is performed. As to timing requirements, the *Brinker* decision provides that:

- A first meal period must occur after no more than 5 hours of work;
- A second meal period must occur after no more than 10 hours of work; and
- There is no penalty if an employee works 5 consecutive hours without a meal period.

Class Action Certification

While Brinker is a seminal wage and hour case, it also gained notoriety in class action circles for the way in which the classes were certified. The court ruled that a party advocating for class treatment must demonstrate the existence of a well-defined community of interest such as an employer's policy, rather than individual questions that require proof of violations on an employee-by-employee basis, such as allegations of altered time records.

Public Agency Employers

In *Johnson v. Arvin-Edison Water Storage District*(2009) 174 Cal.App.4th 729, the California Court of Appeal of the Fifth Appellate District held that a water district did not have to comply with the Labor Code and related IWC Orders regarding employee meal periods and overtime provisions because of its status as a public entity. Although *Johnson*, unlike *Brinker*, did not deal with rest periods specifically, there is a general consensus that public entities need not comply with the Labor Code and IWC Orders regarding rest periods either.

However, if your public agency employs commercial vehicle drivers, meal and rest break requirements will apply to them. (IWC Wage Order No. 9-2001.) Also, the meal and rest period obligations established in *Brinker* do apply to private schools, including colleges and universities.

Despite the *Brinker* decision's limited applicability to public school districts and community college districts, the case provides useful guidance regarding duty free meal and rest periods afforded to public agency employees. Employers are advised to review their meal and rest break policies to ensure they state, at a minimum, that employees are expected to take rest breaks and meal periods. In addition, employers should confirm that managers understand the number of breaks that must be provided, the duty to properly document when breaks are taken, and the risk of engaging in conduct that undermines or prevents employees from taking breaks.

If you have any questions about this decision, please feel free to contact one of our eight offices located statewide. You can also visit our website or follow Lozano Smith on Facebook.

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