

News from our Employment & Labor Group

CALIFORNIA WAGE/HOUR AND CLASS ACTION NEWSBREAK— Labor Code Requires Employers to Provide Meal and Rest Breaks, Not Ensure Them

California employers have in the last few years been subject to a slew of class action cases concerning whether they must force employees to take meal periods and rest breaks. **In an important opinion on July 22, 2008, the California Court of Appeal held in *Brinker Restaurant Corp. v. Superior Court* (2008) that, although employers cannot impede, discourage or dissuade employees from taking meal periods and rest breaks, they are not required to police their employees and compel them to take such breaks.** *Brinker* stands as a potential breakthrough opinion on this issue (though it is still subject to California Supreme Court review).

The Brinker Decision

Brinker involved various wage and hour claims filed as a class action against Brinker Restaurant Corporation, which operates 137 restaurants in California, including Chili's Bar & Grill, Romano's Macaroni Grill, and Maggiano's Little Italy. Over 59,000 employees were in the proposed class of plaintiffs certified by the trial court, consisting of three sub-classes of employee claims related to: (1) rest breaks, (2) meal periods, and (3) "off-the-clock" work. *Brinker* reversed this certification order on the ground that the trial court failed to properly consider the specific elements of each plaintiff's claims to determine whether they qualified for class action treatment.

The *Brinker* court held that because employers are not required to ensure that meal periods and rest breaks are taken,

individualized issues predominated and precluded class treatment. **The court required evaluation of each employee's history of missed meal periods or rest breaks on an individualized basis** in order to determine whether individual employees missed meal periods and rest breaks as a result of employer coercion, voluntary waiver, or some other unlawful reason.

Similarly, with respect to the "off-the-clock" claims, the *Brinker* court held that because employers can only be held liable for employees working off-the-clock if they knew or should have known they were doing so, individualized issues predominated and precluded class treatment. Thus, whether an individual employee actually worked off-the-clock, *why* they did so, and whether the employer knew or should have known that the employee was working off-the-clock, are individualized inquiries that are not suitable for resolution on a class-wide basis.

Brinker Restaurant Corporation had **written policies** regarding (1) the availability of, and entitlement to, meal periods and rest breaks; and (2) the responsibility of each employee to clock in for all time worked because working off-the-clock was prohibited. The plaintiffs did not produce any evidence of a potentially unlawful company-wide policy or deliberate practice common to the entire class resulting in an employee missing a meal period or rest break, or working off-the-clock. As a result, the *Brinker* court concluded that individualized issues predominated. It ordered the

trial court to vacate its prior ruling and deny class certification for the proposed

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meal period, rest break, and off-the-clock sub-classes.

The bottom line—updated policies and compliance review

Unless it is reversed by the California Supreme Court, *Brinker* will stand as an important victory for employers defending against wage and hour class litigation regarding meal periods and rest breaks.

As a practical matter, California employers should ensure that their meal period and rest break policies are clear, complete, and up to date. Employers must remain diligent in monitoring compliance with their policies under California substantive law. This can minimize the likelihood that meal period and rest break class action litigation will be filed against them. **Although *Brinker* makes clear that employers are not required to ensure that meal and rest breaks are taken, it does not relieve an employer from its affirmative obligation to make available and permit meal periods and rest breaks as required by law.**

Our team has a great deal of experience on the forefront of these counseling and class action litigation issues. If you would like to discuss these issues further or have questions about this *Alert*, please contact one of the attorneys listed above. ■