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California Court Reduces Burden On Employers To Provide Meal Periods

In one of the biggest cases of the year, the California Court of Appeal ruled yesterday that employers need only make a meal period available to employees as opposed to ensure that meal periods are actually taken. (*Brinker Restaurant Corp. v. Superior Court* 2008 DJDAR 11267.) This ruling will have a substantial and immediate impact on employers facing claims for meal period violations. It also lessens the burden on employers to verify that each employee has taken a timely meal period.

In an opinion issued three years ago, *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 962, the Court of Appeal ruled that employers have "an affirmative obligation to ensure that workers are actually relieved of all duty." In addition, the Division of Labor Standards Enforcement ("DLSE") has taken the position that "[i]t is the employer's burden to compel the worker to cease work during the meal period." (DLSE Enforcement Policies and Interpretations Manual, § 45.2.1.) The DLSE equates the employer's duty to provide meal periods with the duty to pay minimum wage. (*Ibid.*)

The *Cicairos* case has been criticized by a federal court interpreting California law. Such cases are not, however, viewed as authoritative. Moreover, given the DLSE opinion, fighting these issues at a Labor Commissioner hearing almost always resulted in an unfavorable ruling.

The *Brinker* case primarily focused on whether employees of Brinker-owned restaurants can proceed as a class and sue Brinker for meal and rest period violations. In determining whether the case could proceed as a class, or whether individuals would be required to pursue their cases separately, the court addressed the issue of the employer's obligation to provide meal periods.

The *Brinker* court limited the *Cicairos* case to the facts of the case. *Brinker* concluded that the employer in *Cicairos* had the obligation to ensure workers were relieved of duty because the employer had the ability to track all of their truck driver's activities by computer and were required by the collective bargaining agreement to schedule meal periods for employees. However, instead of complying with these obligations, the employer pressured drivers to make more trips, making it very difficult to take a meal period.

The *Brinker* court examined section 512 of the Labor Code which reads, "An employer may not employ an employee for a work period of more than five hours per day without *providing* the employee with a meal period of not less than 30 minutes." The Court determined that the common dictionary meaning of the term "provide" means "to supply or make available." To provide does not mean the employer must *ensure* that employees take a timely meal period. Rather, an employer's obligation is merely to make the meal period available to employees.

This case will have a substantial impact on wage and hour litigation in California. It will also provide some relief to California employers

who have been burdened with this obligation to "ensure" employees take a meal period. Many employers have been forced to pay an employee one hour of "premium" pay when the employee, on his/her own initiative, failed to take a meal period. The *Brinker* case eliminates the obligation of employers to pay a premium pay penalty when employees choose not to take a meal period.

Employers must nevertheless continue to supply or make meal periods available. An employee might still make a claim for meal period violations if (s)he feels compelled to work through the meal period due to the press of business or other reasons. Therefore, we recommend that you investigate reasons for missed meal periods. Depending on the nature of the business, employers might also need to provide substitutes or replacements for workers during the meal period. Taking actions such as this will greatly reduce an employee's success in claiming a meal period was not made available to him/her.

The *Brinker* case gives employers a viable defense in many cases where an employee claims meal period violations. The issue will focus on whether or not an employer made the meal period available. If meal periods were made available, the employer should prevail.

Even if the employer loses, the employer will present a viable defense, which should preclude the imposition of waiting period penalties. Waiting period penalties are imposed when an employee is not paid all wages at the time of termination. These penalties cannot be imposed if the employer presents a viable defense to the claim.

We are excited about the impact of the *Brinker* case on our clients. Contact our office if you have any questions about this case, or your obligation to provide meal and rest periods to employees.

This is not intended as a complete analysis of the subject matter, or legal advice on any specific matter. Contact us if you have specific questions or need further assistance.