



Long-Awaited California Supreme Court *Brinker* Rest & Meal Period Class Action Decision Released

By: Nina Huerta, Karen R. Palmersheim, Richard I. Scharlat and Samantha Ingram

Employers across California collectively exhaled today after the California Supreme Court released its long-awaited decision in *Brinker Restaurant Corporation v. Superior Court (Hohnbaum)*, which clarified California employers' obligations regarding meal and rest periods under California law. See Cal. Lab. Code §§ 226.7, 512.

On appeal were several issues significant to California employers, including whether employers are required to provide a meal period to their employees or whether they have the more onerous duty to ensure that meal periods are taken by their employees. The Court also considered whether meal periods need to be provided to employees on a rolling five-hour basis, as plaintiffs proposed, or whether it is sufficient to provide one meal period for every five hours worked. In addition, the Court decided whether the trial court committed error *per se* by ruling on class certification without first resolving the issue of Brinker's duty to provide meal and rest periods.

These issues are noteworthy to employers not only because of the potential legal exposure that could arise from meal period violations, but because of the administrative headaches that would have resulted had the California Supreme Court adopted plaintiffs' arguments.

While the discussion of *Brinker's* significance has just begun, the following key points can be taken from this decision:

1. Employers Are Required to Provide Meal Periods to Employees; Not to Ensure They Are Taken

Chief among the plaintiffs' arguments in *Brinker* was that California law requires employers to ensure employees have taken their meal periods each workday. In essence, plaintiffs argued that employers are required to police their employees' hours to ensure that they take meal periods. In plaintiffs' view, an employee who misses a meal period is automatically entitled to penalty wages under California Labor Code § 226.7, regardless of whether the employer actually required the employee to miss the meal period or took any other steps to discourage it.

On the other hand, Brinker argued that employers are only required to provide a meal period to their employees and that their obligations under the Labor Code are fulfilled by simply making a meal period available and relieving employees of their duties during this time period.



The California Supreme Court sided with the employers, holding that an employer is required to “relieve its employee of all duty, with the employee thereafter at liberty to use the meal period for whatever purpose he or she desires, but the employer need not ensure that no work is done.”

2. Meal Periods Need Not be Provided on a Rolling Five-Hour Basis

The Court also addressed whether the Legislature intended to regulate the precise timing of meal periods. The Court held that, “absent waiver, [the Labor Code] requires a first meal period no later than the end of an employee’s fifth hour of work, and a second meal period no later than the end of an employee’s 10th hour of work.”

Plaintiffs argued that Wage Order No. 5 imposes additional requirements on the timing of meal periods, such as that first meal periods be timed to prevent work periods, before or after, exceeding five hours. However, the Court expressly rejected the existence of any “additional requirements” beyond those in Labor Code section 512. The Court agreed with plaintiffs that the period preceding a first meal period must be limited to five hours, but disagreed that the amount of work after a meal period must be limited to five hours.

3. Class Certification, Merit Issues and the Predominance of Common Questions

The California Supreme Court rejected the Court of Appeal’s holding that the trial court committed error *per se* by ruling on class certification without first resolving legal disputes concerning the scope of Brinker’s duty to provide meal and rest periods. Instead, the Court held that a trial court need only resolve legal or factual disputes that are necessary to a determination of whether a class is proper. The Court recognized that issues of whether common questions will predominate often depends on the resolution of issues closely tied to the merits, and the Court’s opinion addresses merit issues in analyzing the certification issues.

The Court also addressed the propriety of three subclasses: a rest period subclass, a meal period subclass, and an “off-the-clock” subclass. The Court held that the trial court did not abuse its discretion in concluding that common questions predominated for the rest period subclass. The Court held that the existence of a common, uniform rest policy created common questions for class certification even if Brinker had a defense of waiver. Having rejected plaintiffs’ theory that meal periods must be provided every five hours, the Court concluded that the meal period subclass definition included individuals who now had no possible claim. The Court therefore remanded the question of meal period subclass to the trial court in light of the Court’s clarification of the law. Unlike the rest period subclass, the Court held the “off-the-clock” subclass did not present either a common policy or common method of proof. The Court noted that Brinker’s “off-the-clock” policy was consistent with California law and there was no evidence that there was a systematic policy to pressure or require employees to work off-the-clock.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact one of Locke Lord’s **Labor & Employment Practice** attorneys or one of the authors listed below:

Nina Huerta | T: 213-687-6707 | nhuerta@lockelord.com

Karen R. Palmersheim | T: 213-687-6742 | kpalmersheim@lockelord.com

Richard I. Scharlat | T: 212-415-8510 | rscharlat@lockelord.com

Samantha Ingram (Bar Admission Pending) | T: 646-217-7530 | singram@lockelord.com