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RECENT COURT OF APPEALS DECISION CLARIFIES MEAL AND REST PERIOD ISSUES

The California Court of Appeal for the Fourth District recently delivered a much awaited opinion in the matter of Brinker Restaurant Corporation v. Superior Court (Case No. D049331). Specifically, the Court held that California employers are required to provide meal and rest periods to their non-exempt employees by making such periods of time available, but an employer is not required to ensure such breaks are taken.

California employers are subject to meal and rest period requirements for employees who are not exempt from overtime law. As such, employers must provide at least a ten (10) minute rest break for every four (4) hours worked or major fraction thereof and a thirty (30) minute duty free meal period for every five (5) hour shift or more.

In Brinker, the employer (“Brinker”) operated 137 restaurants in California and maintained a written policy granting employees a thirty (30) minute meal period upon working a five (5) hour shift or greater. In addition, the employer’s policy provided that employees who work more than a 3.5 hour shift are entitled to a ten (10) minute break for each four (4) hours they work. Brinker also required its nonexempt employees to clock in and out for every shift and not begin working until he or she had clocked in to work. Furthermore, the employee handbook stated that “working off the clock” for any reason violated company policy and also required employees to immediately notify a manager if the employee’s timecard was inaccurate.

The employees filed a class action lawsuit against Brinker arguing that the employer failed to provide paid rest periods for every four (4) hours worked. In addition, employees claimed that meal periods were not provided to employees who worked in excess of a five (5) hour shift, and employees were not compensated accordingly for missed meal periods. Finally, the employees claimed that Brinker unlawfully required its employees to work “off the clock” when meal periods were provided.

Clarifying California law and relying on recent federal law, the Court made the following key rulings:

- Employers need only *provide*, not ensure, rest periods are taken.
- Where it is not practicable to do so, rest periods need not occur in the middle of each four-hour work period.
- Employers cannot “impede, discourage, or dissuade” employees from taking meal periods, but need not force employees to take meal breaks, and need not “ensure” the meal breaks are taken. Like rest breaks, an employer need only *provide* an employee with the opportunity to take a meal period.

- Meal periods may be waived if the work period does not exceed six (6) hours and the waiver is voluntary.
- Employers cannot “coerce, require, or compel” employees to work off the clock.

On July 25, 2008, Angela Bradstreet, California Labor Commissioner, issued a memo to the Division of Labor Standards Enforcement staff informing them that the decision in Brinker is binding on the agency, that all staff must follow the rulings in the Brinker decision “effective immediately,” and the decision is to be applied to pending matters. A copy of the memo may be obtained at http://www.dir.ca.gov/DLSE/Brinker_memo_to_staff-7-25-08.pdf.

While this decision is not final as it is still subject to further appeal before the California Supreme Court, it reminds us of the importance of maintaining appropriate policies and recordkeeping protocols to ensure a legally compliant work environment is being provided.

If you should need assistance in conducting a wage and hours audit to ensure your organization is legally compliant, or if you have any questions regarding this ruling or other employment related matters, all such questions should be directed to James Young (jyoung@smymlaw.com) or Chastin Pierman (cpierman@smymlaw.com) at Spector, Middleton, Young & Minney, LLP, at (916) 646-1400.

For further coverage of wage and hour law and an analysis of a host of other critical charter school personnel issues, please visit our website to learn about our upcoming full-day personnel workshop in your area.

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