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California Court Clarifies Meal and Rest Period Obligation – Enforcement Efforts Modified

In *Brinker Restaurant Corp. v. Superior Court of San Diego County*, a California appellate court decided three significant issues that bring needed clarification to an otherwise uncertain area of state wage and hour law. The court held that:

1. Rest Periods. While employers cannot impede, discourage or dissuade employees from taking rest periods, they need only provide, not ensure, rest periods be taken. Employers need only authorize and permit rest periods every four hours or major fraction thereof. Rest periods need not, where impracticable, be taken in the middle of each work period.

2. Meal Periods. While employers cannot impede, discourage or dissuade employees from taking meal periods, they need only provide, not ensure, meal periods are taken. Also, employers are not required to provide meal periods for every five consecutive hours worked.

3. Hours Worked. While employers cannot coerce, require or compel employees to work “off the clock,” they can only be held liable for employees working “off the clock” if they knew or should have known employees were doing so.

These holdings are significant to California employers because, until now, employers have been unsure of their legal obligation regarding employee meal and rest periods. In particular, certain administrative interpretations of the applicable statutes and regulation required employers to ensure employees took mandated meal and rest periods, rather than merely providing or making the mandated periods available. This interpretation simplified administrative enforcement because, once an employee missed a required meal or rest period, liability was assessed without consideration of the employer’s efforts to provide employees the opportunity to take the meal or rest period. Essentially, under this former interpretation, employers

were liable for employees' failure to take advantage of offered meal and rest periods. For many employers this interpretation was not only unreasonable, but at times costly.

Now, as the California appellate court has followed earlier federal court interpretations, employers can pursue more rational policies and practices for offering meal and rest periods. Written policies are strongly recommended. Through written policies, employers can make available to employees appropriate meal and rest periods, thereby meeting substantial compliance with their legal obligations. Of course, employer practices must be consistent with the written policies to ensure lawful compliance. Employers who impede, discourage, or dissuade employees from taking meal and rest periods are still liable for the one (1) hour premium imposed each day an employer fails to properly provide meal or rest periods.

Effective immediately, in order to assess the regulatory premium, enforcement agencies are required to demonstrate that an employer impeded, discouraged or dissuaded its employees from taking the meal or rest period. This standard for enforcement is certainly more difficult to meet than merely showing that an employee missed the meal or rest period and nothing more. In fact, the Brinker Restaurant Corp. case has already prompted the California Division of Labor Standards Enforcement (DLSE) to issue a memorandum to its staff incorporating the new decision's interpretation into its enforcement efforts. A copy of the DLSE memorandum can be found at the following website: [click here](#).

Undoubtedly additional issues will arise from this new interpretation of the California meal and rest period obligation. Still, employers should consider prompt and appropriate action in order to take advantage of this opportunity as soon as possible.

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