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CALIFORNIA HIGH COURT CLARIFIES EMPLOYER OBLIGATIONS TO PROVIDE PAID REST PERIODS AND UNPAID MEAL BREAKS

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In a decision employers have been anticipating since 2008, the California Supreme Court has clarified key aspects of the state's laws regarding paid rest periods and unpaid, duty free, meal breaks for non-exempt employees. In Brinker Restaurant Corporation v. Superior Court, the high court examined exactly how many 10-minute paid rest periods non-exempt employees are entitled to under the Industrial Welfare Commission Wage Orders. Under the new Brinker standard, employees are entitled to rest breaks as follows:

Hours Worked	Rest Periods
0 to less than 3.5 hours	None
3.5 up to 6 hours	1
More than 6 up to 10 hours	2
More than 10 up to 14 hours	3
More than 14 up to 18 hours	4

The Supreme Court rejected the plaintiffs' argument that a rest period needed to precede any mandatory meal break. Instead, the Supreme Court held, "Employers are thus subject to a duty to make a good faith effort to authorize and permit rest breaks in the middle of each work period, but may deviate from that preferred course where practical considerations render it infeasible." Given that Brinker involved review of decisions regarding class certification, the court declined to speculate about what kind of considerations would be sufficient to justify departing from providing breaks during the middle of a work period. The Supreme Court did not alter the unchallenged principle that rest breaks can be waived.

The Supreme Court addressed two critical issues with respect to unpaid, duty free, meal breaks. First, the court held an employer complies with the applicable laws so long as it "relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." Explicitly rejecting plaintiffs' argument that employers were required to forcibly prevent employees from working during meal breaks, the Court went on to hold that employers are NOT obligated to police breaks to ensure work is not performed. Should an employee voluntarily choose to work through their meal break and the employer "knew or reasonably should have known that the worker was working through the authorized meal period," the employer would be required to pay the employee for the time worked, but they would not be liable for the statutory premium pay applicable when the employer fails to provide the break at all.

Second, with respect to timing, the Court rejected plaintiffs' argument that employees are entitled to a second meal break five hours after their first meal break.

In Brinker, for example, the employees had a single meal period early in their shift followed by six to eight hours of work during which they did not have a meal break. "Under the wage order, as under the statute, an employer's obligation is to provide a first meal period after no more than five hours of work and a second meal period after no more than 10 hours of work."

This decision brings clarity to an area of California law that has long been fodder for class actions and Private Attorney General Act claims. The precision with which the Supreme Court addressed rest periods should encourage all employers to review applicable policies in their handbooks to make sure they comply with the newly articulated rest period rules. The holdings regarding meal breaks should come as a relief to many employers because it relieves them of the cumbersome duty to police employee mealtime activities. Also, employers in many fields, not least health care and hospitality where shifts often begin and end at unconventional times, should appreciate the greater flexibility to schedule meals.

To be sure, aspects of the Brinker decision will make class certification more difficult to achieve in the future. However, Justice Werdegar, the author of the decision, took the unusual step of penning a separate concurrence to specifically counsel that Brinker was not intended to be a per se bar to class certification of cases based on denial of rest periods or meal breaks. Employers will no doubt continue to face claims based on established practices discouraging employees from taking meal breaks or rest periods. Likewise, employers should expect the courts to be facing cases requiring them to define the parameters of the good faith exceptions to scheduling rest periods at times other than the middle of work periods.

For more information regarding Brinker or any other California employment law issues in general, please contact your principal Squire Sanders lawyer or one of the individuals listed below.

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