



A Professional Corporation

Employment Alert

The Long Awaited Brinker Decision is Here!!!

April 12, 2012

On April 12, 2012, the Supreme Court issued its decision in *Brinker v. Superior Court*, answering several meal and rest break questions, the most important of which was whether an employer must ensure that non-exempt employees do no work during their legally mandated 30-minute meal breaks?

The answer is “no.” An employer need not ensure the employee does no work during a meal break. That is, an employer does not violate California law if it knowingly permits an employee to work during a meal break. The employer need not police meal breaks to ensure no work is performed during the break.

Permit work during a meal break is legal; require work during a meal break is not. To comply with California law, the employer must relieve the employee of all duties during the meal period. The employer must relinquish all control over the employee’s activities during that period. The employer must give the employee a reasonable opportunity to take an uninterrupted 30-minute meal break and not impede or discourage the employee from doing so.

Timing of meal breaks

The Supreme Court also addressed when during a work shift an employer must provide a meal break? The general rule, said the court, is that the employer must allow a first 30-minute meal period no later than the end of an employee’s fifth hour of work, and a second 30-minute meal period no later than the end of an employee’s 10th hour of work. There are no other timing requirements on providing meal breaks. In particular, a first meal break may be given more than five hours before the second one during a work

shift of 8 or more hours.

Amount and Timing of Required Rest Breaks

Brinker also decides two issues regarding rest breaks: How many 10-minute rest breaks must be allowed during work shifts of differing length, and when during those shifts the rest breaks must occur?

The short answers are:

Length of shift (in hours)	Required rest breaks (in minutes)
Less than 3-1/2	0
3-1/2 to 6	10
More than 6 to 10	20
More than 10 to 14	30

Ten-minute rest breaks must be allowed in the middle of each 4 hour work shift “insofar as practicable.” Employers must make a good faith effort to authorize and permit rest breaks in the middle of each 4-hour work period, but may deviate from that preferred course where practical considerations render it infeasible. The law does not require that a rest break precede a meal break or vice versa.

If you have any questions about the *Brinker* decision, please direct them to Rhonda L. Nelson 415-677-5502, rln@severson.com or Danielle M. Ellis-Andrews at 415-677-5504, dme@severson.com.

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