Brinker v. Superior Court: The California Supreme Court Finally Hands Employers the Break They Have Been Waiting For

April 12, 2012

On April 12, 2012, the California Supreme Court finally issued a long-awaited decision in the seminal case of *Brinker Restaurant v. Superior Court,* and ruled that while California workers have a legal right to take their rest and meal breaks on the job, employers are "not obligated to police meal breaks and ensure no work thereafter is performed."

Brinker was decided at the appellate level on July 22, 2008, and has been pending before the Supreme Court for nearly four years. Among other issues, the Court finally answered the question of whether employers, in accordance with Labor Code Section 512, need to "ensure" that employees who work at least five hours MUST take their full 30 minute meal breaks, or whether employers may merely make the meal breaks available to those employees. The Supreme Court ultimately ruled that an employer satisfies its obligation under California law if "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."

Fortunately for employers, the good news did not stop there. Contrary to the position taken by many plaintiffs' attorneys in years past, the Supreme Court similarly clarified that the *Labor Code* and applicable IWC Wage Orders do not dictate in what sequential order meal and rest periods must be taken, nor do they prohibit an employer from scheduling meal periods early within the shift. Thus, while the first meal break must be made available within the first five hours, the Supreme Court held "we cannot agree that the current version of Wage Order No. 5 limits to five hours the amount of work after a meal." That means that an employee may take their meal break and then work another six hours after, and the employer would still be in compliance. Finally, the Court upheld the appellate court decision that the off-the-clock work was not appropriate for class certification. "On a record such as this, where no substantial evidence points to a uniform, companywide policy, proof of off-the clock liability would have had to continue in an employee-by-employee fashion."

This highly anticipated decision provides much needed clarity and relief on an issue that has plagued the California courts with countless lawsuits and caused operational nightmares for restaurants and other

employers throughout the state. Further, because the Court issued an interpretation of existing law, this decision should be applied retroactively and to pending lawsuits.

While the *Brinker* decision should allow employers in all industries to breathe a sigh of relief, that is not to say that meal and rest break claims will disappear. The Court did confirm that meal and rest break issues may still be decided by way of class-action lawsuits. Compliance, according to the Court, will vary from industry to industry. Employers wishing to capitalize on the flexibility that *Brinker* provides must immediately ensure that they have written policies in place advising employees of their right to take meal and rest breaks, and emphasize the timing of those breaks. Such policies should specifically instruct employees to notify someone in upper management or human resources, in writing, if they have requested but have been denied the opportunity to take a meal and/or rest break. The Court also made clear that employers may not in any way pressure employees to work through their meal breaks by way of “ridicule or reprimand,” and therefore, it is more important than ever to train management staff on the proper way to handle these breaks.

For a more detailed analysis of the *Brinker* decision and its ramifications for your operations, we will be offering a webinar on April 18, 2012, at 9:30 a.m. Pacific/11:30 a.m. Central. More details will be forthcoming. If you have any questions about the *Brinker* decision, please contact your Lathrop Gage attorney or any of the attorneys listed above.