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Anxiously-Awaited *Brinker* Decision Holds That Employers Need Not Police Whether Employees Take Meal Periods

Jul.23.2008

On July 22, 2008, the Fourth District California Court of Appeal issued its long-awaited revised decision in *Brinker Restaurant Corp. v. Superior Court*.

The *Brinker* matter came to the Fourth District on appeal from a class certification order, in which the trial court granted certification for a class of employees "who have not been provided with meal and rest breaks in accordance with California law. . . ." Defendant Brinker Restaurant Corp. ("Brinker") argued against certification, contending that meal and rest periods need only be provided, not enforced, and that whether Brinker employees took their meal and rest breaks thus became a "hopelessly individualized" inquiry not amenable to class treatment. The trial court, however, explicitly granted class certification without resolving the legal question of how much Brinker Restaurant Corp. must do to "provide" meal and rest periods to comply with the Labor Code. The question before the Court of Appeal was thus whether the court below erred in granting class certification without considering what law should apply to the plaintiffs' claims.

The Court of Appeal held explicitly that "while employers cannot impede, discourage, or dissuade employees from taking" rest periods or meal breaks, "they need only provide, *not ensure*" that rest breaks and meal periods are taken. (Emphasis supplied.) In so holding, the Court of Appeal adopted both the legal and the policy rational of *White v. Starbucks Corp.*, 497 F. Supp. 2d 1080 (N.D. Cal. 2007), concurring in the theory that it would be logistically impossible for large corporations to police whether their workforces took the provided meal and rest breaks and that such a law would provide perverse incentives to the workforce to shorten or skip meal periods.

In the absence of a class-wide policy that prohibited or limited meal and rest breaks, the Court of Appeal then determined that common issues could not predominate because of the individualized nature of the inquiry into whether and when employees took the meal and rest breaks they were afforded by Brinker policy. The Court of Appeal thus vacated the class certification order and directed the court below to deny certification.

The Court of Appeal also took the opportunity to resolve another, related meal period question. Discarding the so-called "rolling" meal period theory, the Court of Appeal explained that employers are not required to provide a meal period every five hours and that the passage of five hours after an initial meal period did not entitle an employee who worked less than ten hours to a second meal period.

The *Brinker* decision brings clarity to some of the murkiest issues in California meal and rest period law, and in turn some needed relief to employers with operations in California – although the relief may be temporary. There is little doubt that the *Brinker* decision will immediately be appealed to the California Supreme Court, and so it may be some time yet before there is a definitive answer on the extent of an employer's affirmative obligation in providing meal and rest periods.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Thomas P. Gies
Partner – Washington, D.C.
Phone: +1 202.624.2690
Email: tgies@crowell.com