



LABOR & EMPLOYMENT

ALERT

LONG-AWAITED *BRINKER* DECISION A RELIEF FOR EMPLOYERS

By Jeffrey D. Polsky

After more than three years and two rounds of briefing, the California Supreme Court has issued its long-awaited decision in *Brinker Restaurant Corp. v. Superior Court*. Overall, the decision is a significant win for employers. Here are the key points in the unanimous decision that the Court issued on April 12, 2012:

- **Employers do not have to police their employees to make sure that they're taking their meal breaks.** They're required to (1) relieve employees of all duty; (2) relinquish control over their activities; and (3) permit them a reasonable opportunity to take an uninterrupted 30-minute break.

- Employers still need a meal break policy and still need to record the time that employees begin and end their breaks. But if an employer makes the breaks available (as specified in the prior paragraph) and an employee cuts his or her break short (or doesn't take one), the employer does not owe a penalty. The employer would, however, need to pay the employee for the time worked.

- As before, employers have to mean it when they say they're making the meal breaks available. They can't pressure employees or provide incentives for them to skip breaks.

- **There is no rolling five-hour rule.** In other words, there's no penalty if an employee works five consecutive hours without a meal period (as the plaintiffs in *Brinker* argued). This is a huge relief because, when the Court asked for post-hearing briefing on this issue, it raised the

specter that almost every employer in the state had a policy that was wrong.

- So the rule for meal periods remains:
 - Employees who work no more than five hours get no meal period.
 - Employees who work more than five but no more than six hours get a meal period, unless they've waived it in writing. If they don't waive it, the meal period must begin by the end of the fifth hour.
 - Employees who work more than six but no more than 10 hours get a meal period regardless of whether there's a waiver. The meal period must begin by the end of the fifth hour.
 - Employees who work more than 10 hours get a second meal period. If they work no more than 12 hours they can waive it. If they don't waive it, the meal period must begin by the end of the 10th hour.
- The rules for rest breaks remain the same.
 - Employees who work no more than three-and-a-half hours get no rest period.
 - Employees who work three-and-a-half to six hours get one rest period.
 - Employees who work more than six and up to 10 hours get two rest periods.
 - Employees who work more than 10 and up to 14 hours get three rest periods.

There will still be wage and hour class actions and, in

some ways, the Court lowered the bar on the procedural requirements for getting a class certified. But overall, employers can breathe a collective sigh of relief.

For more information on *Brinker* and other developments, please visit our [California Employment Law Blog](#).

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