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WAGE AND HOUR CLASS ACTION ALERT

CALIFORNIA COURT OF APPEAL HOLDS EMPLOYERS ARE ONLY OBLIGATED TO PROVIDE, NOT ENSURE, THEIR EMPLOYEES' MEAL PERIODS, AND REVERSES CLASS CERTIFICATION

SUMMARY

The California Court of Appeal for the Fourth Appellate District on July 22, 2008, in Brinker Restaurant Corp. v. Superior Court of San Diego County, issued a unanimous, published opinion that defines the elements of meal period, rest period and off-the-clock claims under California law. The court concluded that an employer must only provide meal and rest breaks to employees, not ensure that employees take them, as lawyers for plaintiffs have argued in many cases. The court held that why an employee did not take a particular break was an individual question that could not be resolved on a class basis. The court thus reversed class certification.

BACKGROUND

In their class action lawsuit, plaintiffs alleged that Brinker Restaurant Corporation, owner of 137 restaurants throughout California, failed to provide meal and rest periods required by California law and unlawfully required them to work off the clock during meal periods. After the trial court granted class certification, Brinker petitioned the Court of Appeal for a writ of mandate, arguing that the trial court had failed to determine the elements of plaintiffs' claims. Had it correctly decided those elements, Brinker argued, the trial court could only have concluded that class certification was improper because the resolution of plaintiffs' claims would require a host of individual inquiries. The Court of Appeal's opinion adopted Brinker's arguments in their entirety.

MEAL PERIODS

With respect to plaintiffs' meal period claims, the Court of Appeal held that the trial court should have identified the elements of those claims and then decided that employers need only make meal periods available, not ensure that they are taken. Had the trial court correctly held that employers need not force their employees to take meal breaks, it would have ruled that individual issues necessarily predominate with respect to those claims: "It would need to be determined as to each employee whether a missed or shortened meal period was the result of an employee's personal choice, a manager's coercion, or, as plaintiffs argue, because the restaurants were so inadequately staffed that employees could not actually take permitted meal breaks." Therefore, class certification of that claim was improper.

The Court of Appeal further held that the trial court's certification ruling was based on the incorrect assumption that an employer must make a 30-minute meal period available to an hourly employee for every five consecutive hours of work. Plaintiffs argued that Brinker scheduled meal periods for its employees early in their shifts, and then failed to provide a second meal period five hours after their return from that "early lunch." The Court of Appeal rejected plaintiffs' "early lunch" theory, holding that the Labor Code provides a first meal period to employees working "more than five hours per day," and a second meal period to employees working "more than 10 hours per day." Thus, employees are entitled to a meal period not according to the number of consecutive hours that they work, but according to the number of hours that they work "per day."

REST PERIODS

With respect to plaintiffs' rest period claims, the Court of Appeal held that hourly employees may also waive their rest breaks. Because-as even plaintiffs acknowledged-employers are not obligated to ensure that their employees take rest breaks, "any showing on a class basis that plaintiffs or other members of the proposed class missed rest breaks or took shortened breaks would not necessarily establish, without further individualized proof, that Brinker violated" California law, so rest period claims could not be pursued on a class basis. The Court of Appeal also held that rest periods must be authorized every four hours, except that employees working three-and-a-half hour shifts are entitled to a rest period, and employees working seven-and-a-half hour shifts are entitled to a second rest period. The Court of Appeal rejected plaintiffs' argument that rest breaks must be provided every three-and-a-half hours. The Court of Appeal further held that because California regulations only require that rest breaks be scheduled "insofar as practicable" in the middle of each four-hour work period, the propriety of allowing a rest period near the end of a four-hour work period depends on individual variables and cannot be litigated on a class basis.

OFF-THE-CLOCK

As to plaintiffs' off-the-clock claims, the Court of Appeal likewise held that the trial court erred in certifying a class before determining the elements of those claims. Because employers can only be held liable for off-the-clock work if the employer knows or should have known the employee was working off the clock, and because Brinker has a written corporate policy prohibiting off-the-clock work, resolution of plaintiffs' claims would "require individual inquiries into whether any employee actually worked off the clock, whether managers had actual or constructive knowledge of such work and whether managers coerced or encouraged such work." Therefore, class certification of this claim also was inappropriate.

STATISTICAL AND SURVEY EVIDENCE

Finally, the Court of Appeal rejected an argument that plaintiffs raised with respect to all of their claims: that "expert statistical and survey evidence" rendered their claims amenable to class treatment. The Court of Appeal explained that such evidence, while sometimes useful in the class certification context, in this case could not show why meal and rest breaks were not taken, why they were interrupted or why employees worked off the clock. Only individual inquiries could resolve those questions, making class certification of plaintiffs' claims inappropriate.

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