

Supreme Court and Appellate Alert

California Supreme Court Accepts Additional Briefing in Brinker

December 12, 2011

On November 28, 2011, 20 days after argument before the California Supreme Court in *Brinker Restaurant Corp. et al. v. Superior Court* (No. S166350)¹, the California Employment Law Council (“CELC”) requested permission to file a brief addressing whether the Court’s anticipated decision on the proper timing of meal breaks (the “Rolling 5” issue) should be applied retroactively or prospectively.

The CELC argued that if the Court rules that employers must give their employees a meal break every five *consecutive* hours – reversing the Court of Appeal’s decision that a first meal only must be provided to employees working “more than five hours *per day*,” and a second meal only must be provided to employees working “more than 10 hours *per day*” (Lab. Code, § 512, subd. (a), emphasis added) – that decision should only be prospective.

Plaintiffs opposed the CELC’s application for leave to file its brief. On December 2, 2011, the Court accepted the CELC’s brief and allowed all parties to file an answer by January 3, 2012.

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¹ A video of the complete oral argument before the California Supreme Court is available at http://www.youtube.com/watch?v=1JBnSaUt0_M.

