

Employers Need Not Ensure Meal Breaks: Calif. High Court

By **Abigail Rubenstein**

Law360, New York (April 12, 2012, 2:50 PM ET) -- The California Supreme Court on Thursday ruled that employers must relieve workers of their duties during meal breaks but are not obligated to ensure that employees do no work during breaks, and that employers are not required to schedule the breaks at five-hour intervals.

Issuing its long-anticipated decision in a wage-and-hour class action against Chili's Grill & Bar owner Brinker International Inc., the court concluded that "an employer must relieve the employee of all duty for the designated period, but need not ensure that the employee does no work."

The state's highest court agreed to take the case in 2008 to clarify the meal break standard after an appeals court struck down a class of about 60,000 Brinker employees. The restaurant chain argued that employers were merely required to make meal breaks available, while the plaintiff contended that employers also had to make sure that their workers took the breaks.

"The difficulty with the view that an employer must ensure no work is done — i.e., prohibit work — is that it lacks any textual basis in the wage order or statute," the court said in a unanimous opinion authored by Associate Justice Kathryn M. Werdegar.

On a related question about the timing of meal breaks, the court found that an employee's first meal break generally must fall no later than five hours into an employee's shift, but that an employer need not schedule meal breaks at five-hour intervals throughout the employee's shift.

Rather than finding that employers must provide a second meal break five hours after an employee's first meal break, as the plaintiff had urged, the court held that an employer's obligation is to provide a first meal period after no more than five hours of work and a second meal period after no more than 10 hours of work.

“Today the California Supreme Court defined key aspects of California’s meal and rest period laws – especially, that employers need not force their employees to take meal periods they would prefer to skip,” Rex Heinke of Akin Gump Strauss Hauer & Feld LLP, who was Brinker’s lead attorney before the California Supreme Court, said. “The Court’s definitive resolution of these critical issues offers clear and much-needed guidance not only to Brinker and their team members, but to hundreds of thousands of employers and employees statewide.”

Heinke told Law360 that the ruling also preserves flexibility for California employees.

Brinker's executive vice president and general counsel Roger Thompson said: “Brinker is very pleased with the California Supreme Court’s ruling.”

Management-side employment lawyers hailed the decision as a victory.

"The wait was worth it for employers," Leslie Abbott of Paul Hastings LLP said. "Virtually every employer in California has been held hostage by meal period class actions in the past few years. Employers that follow the plain language of the Labor Code by making compliant meal periods available can now breathe a sigh of relief."

But Michael Rubin of Altshuler Berzon LLP, an attorney for the plaintiffs, told Law360 that the plaintiffs were also pleased with the standard the court laid out, noting that the court had found that employers could not coerce or encourage employees to skip their breaks.

He said it was important that the decision made it clear that employees in California can still pursue workplace claims on a class action basis.

“This sends a strong message to those few employers in the state who pile on the work and pressure employees not to take legally mandated breaks that that is improper, that it can be remedied on a class action basis and that their law-abiding competitors who do affirmatively relieve workers of all duties during break time will not be economically disadvantaged by that type of cheating,” Rubin said.

Although the court resolved the questions posed to it concerning the legal standards for meal and rest breaks in the case, it stated that trial courts are not obligated as a matter of law to resolve threshold disputes over the elements of a plaintiff's claims at the class certification stage, unless a particular determination is necessarily dispositive of the certification question.

The employee plaintiffs in the present case sued in August 2004, claiming Brinker had violated California wage-and-hour law as well as the state's unfair competition law, and accused the company of failing to provide meal and rest breaks or compensation in lieu thereof, and making them work off the clock during meal periods.

The trial court certified a class that included three subclasses of Brinker employees to bring claims that employees did not receive meal breaks and rest breaks, and that they were forced to work off the clock. But the Fourth Appellate District ordered the three subclasses decertified.

The Supreme Court determined that the trial court had properly certified the rest break class action, because the plaintiffs' claims were based on a uniform company policy, however, the court held that the off-the-clock subclass was not properly certified because because no evidence of common policies or means of proof was supplied.

As for the meal break subclass, the high court remanded the issue to the trial court.

The Supreme Court found that because the trial court had sided with the plaintiff on the break timing question, and then certified a class that included employees who allegedly were denied meal breaks at the proper time, the class definition was therefore overinclusive in light of the court's ruling on break timing. The court therefore sent the question back to the lower court in light of the clarification on the timing issue.

Justice Werdegar also authored a separate concurring opinion, joined by Justice Goodwin Liu, noting that the court had not accepted Brinker's argument that the questions concerning why meal periods were missed by employees render meal period claims categorically uncertifiable, and that the decision did not establish a per se bar on meal break class actions.

The plaintiffs are represented by Michael Rubin of Altshuler Berzon LLP, Kimberly Kralowec of the Kralowec Law Group, Timothy Cohelan and Michael Singer of Cohelan Khoury & Singer, L. Tracee Lorens and Wayne Hughes of Lorens & Associates PLC and William Turley of the Turley Law Firm PLC.

Brinker is represented by Rex Heinke and Johanna Shargel of Akin Gump Strauss Hauer & Feld LLP, M. Brett Burns, Susan Sandidge and Laura M. Franze of Hunton & Williams LLP, and Karen Kubin of Morrison & Foerster LLP.

The case is Brinker International Inc. et al. v. Superior Court, number S166350, in the Supreme Court of the State of California.

--Additional reporting by Ben James. Editing by John Quinn.

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