

*BRINKER RESTAURANT CORPORATION v. SUPERIOR COURT**
(2008) 165 C.A.4th 25

I. INTRODUCTION

Brinker Restaurant Group (“Brinker”) operates 137 restaurants in California. Brinker’s rest period policy stated, “If I work over 3.5 hours during my shift, I understand that I am eligible for one [10-]minute rest break for each four hours that I work.” Its meal period policy stated, “I am entitled to a 30-minute meal period when I work a shift that is over five hours.” Its policy regarding working off the clock stated, “It is your responsibility to clock in and clock out for every shift you work . . . [Y]ou may not begin working until you have clocked in. Working ‘off the clock’ for any reason is considered a violation of Company policy.”

The lawsuit brought by Brinker’s employees alleged that Brinker failed to provide rest periods, failed to provide meal periods and/or second meal periods for work in excess of ten hours, and failed to compensate for work performed when an employee worked off the clock. A trial court victory for the employees was appealed by Brinker.¹

II. REST AND MEAL PERIODS

Regarding rest periods, the appellate court clarified several issues. First, the court held that rest periods are due every four hours worked. The employees had argued that rest periods were due every 3.5 hours, a position echoed by the DLSE.

Next, the court explained that rest periods need not be taken at any specific time during the four hours, though they should be approximately in the middle, if practicable. And, finally, the court confirmed that rest periods are waivable by an employee, as long as the employer *permits* such breaks to be taken.

The major development in *Brinker* focused on meal period issues. First, the court explained that there is no “rolling five-hour meal period.” An employer only need provide one meal period after five hours are worked, and not another until after ten hours are worked.

Next, the court addressed whether or not an employer must simply “provide” a meal period, or whether an employer must “ensure” that the employee takes the meal period. Consistent with its determination concerning rest periods, the court held that an employer simply needs to provide its employees with the opportunity for a meal period. The court rejected the notion that employers must police their own employees to ensure that meal periods are taken.

III. OFF-THE-CLOCK WORK

Finally, the court considered the issue of work performed while off the clock. Here, the court confirmed the existing rule that employers can only be held liable for off the clock claims if the employer knows *or should have known* that the employee was working off the clock.

¹ One central issue to this case was whether class certification was possible under the facts presented. The issues relating to class certification are not addressed in this article.

IV. CONCLUSION

It remains to be seen whether this case will become final or be reviewed by the California Supreme Court. However, if its holdings become final or are upheld by the Supreme Court, this case offers welcome relief to employers.

* This article is not legal advice. It is written merely to alert you about recent legal developments. If you seek legal advice, please contact Archbald & Spray LLP or another attorney of your choice.