

PRESENT DANGERS OF IMPLEMENTING *BRINKER**

As you may have heard, a recent California appellate decision, *Brinker Restaurant Corporation v. Superior Court*,¹ held that employers need only *provide* their employees with *opportunities* to take their meal and rest periods. Employers need not guarantee that the meal and rest periods are actually taken. For a detailed discussion of this case, please visit Archbald & Spray LLP's website [here](#). This welcome development has caused clients to contact us, to confirm that they could change their employment policies to conform to *Brinker*. We urge caution in doing so.

Brinker, while encouraging at the moment, could be amended or even reversed by further appellate action. *Brinker*, decided on July 22, 2008, could still be reviewed by the California Supreme Court. Whether the California Supreme Court will review *Brinker* may not be known for a few more months. And, if the Court does decide to review *Brinker*, then *Brinker* will no longer be able to be relied upon as legal authority. If your personnel policies are changed before the *Brinker* decision becomes final, you may be subjecting yourself to liability for failing to at least ensure your employees are taking their meal periods.

It might seem like implementing *Brinker* will allow more relaxed record keeping. That is not so. Even if *Brinker* becomes final, it will still be important to keep accurate employee time records. Failure to do so could still result in overtime claims and the assessment of potential penalties. If you have any questions about meal and rest periods, or other employment policies, please contact Douglas Large at 805.564.2070 or via e-mail at dlarge@archbald.com. Please also visit Archbald & Spray LLP's website for other articles and information that you may find useful at www.archbald.com.

* 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.

¹ (2008) 165 C.A.4th 25