

WHAT THE BRINKER DECISION MEANS FOR CALIFORNIA EMPLOYERS

History of Brinker

In 2002 an ex-employee brought a class action against Brinker on behalf of 6,000 employees alleging that the Brinker Corp.

- Failed to provide rest and meal periods in accordance w/ CA laws
- Required employees to work off the clock during meal periods
- Unlawfully altered time records

On April 12, 2012 in *Brinker Restaurant Corp. V. Superior Court* the California Supreme Court rules in favor of Brinker in a case that favors California employers.

The Brinker Decision gave:

- Clarification of meal and rest period requirements
- Direction regarding whether “off-the-clock” and other wage & hour claims may be litigated as class actions.

The Meal Period Questions before Supreme Court:

- Does an employer have a duty to ensure that a meal period is taken?
- Must meal periods be scheduled so that an employee is not working more than five hours before or after the meal period? (Floating or rolling five hour rule)

The Answer to both questions — NO!

Is there a Duty to Ensure Meal Period Is Taken?

- An employer's obligation is to “relieve the employee of all work duties during a meal period.”
- Provide means “provide” — not ensure
- Burden remains on employer to prove

Employers Must:

- Relieve employees of all duty
- Relinquish control over employees' activities
- Permit the employee a reasonable opportunity to take an uninterrupted meal period

Employers May Not:

- Impede or Discourage an employee from taking a meal period
- Coerce employee not to take or create incentives to forego a meal period

Meal Period Timing:

- First Meal: No later than the end of the fifth hour of work
- Second Meal: No later than the end of the tenth hour of work

Waiving Meal Period:

First meal period may be waived by mutual consent of the employee and the employer, if:

- The employee works no more than six hours on the day in question.

Second meal period may be waived if:

- The first meal period was not waived; and
- The employee works no more than 12 hours on the day in question.

Meal Period Key Points:

- Duty Free
- At least 30 minutes - generally unpaid
- No “auto deduct”
- Starts on time (no later than 5th/10th hour)
- Provided not ensured
- No premium is due if employee chooses not to take a full 30 minutes; but employer must pay for all hours worked.

Documents & Practices:

Demonstrate you have a policy of:

- (1) Relieving employees of all duty obligations during the meal period;
- (2) Prohibiting any supervisor from encouraging or coercing an employee from working during or through a meal period; and
- (3) Training for supervisors on this standard.

Tips for Employers:

- Confirm meal period policies comply with law
- Written policy requiring accurate recording of all time (worked and time on meals)
- Overtime pre-authorization policies
- Schedule training for managers/employees
- Require employees to report if anyone interferes with their ability to take meal period.
- Employee acknowledgments

Brinker and Rest Periods:

Two questions regarding rest period rules before the Supreme Court:

1. Does CA law require rest periods be taken before the meal period?
2. What does the Wage Order mean when it says that employees have a right to a net 10 minute rest period for each “four hour work period or major portion thereof”?

Wage Order 5 Language:

“Every employer shall authorize and permit all employees to take rest periods, **which insofar as practicable** shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)

minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours.”

Rest Periods Timing:

- No requirement regarding the time of meal periods vs. rest periods!
- Preferred course: Middle of a four hour work period
- Employer may deviate “where practical considerations render the approach infeasible”
- Need not be before a meal/break period

Rest Period Requirements:

10 minutes rest for each 4 hours worked

Shift Length	=	# of Rest Periods
3.5 Hours or Less		No Rest Period
3.5 to 6 Hours		1 Rest Period
> 6 Hours		2 Rest Periods
>10 Hours		3 Rest Periods

Rest Period Key Points:

1. Rest period need not occur before meal period
2. Employees cannot “waive” rest periods
3. No one-hour premium pay due unless:
 - Employer does not make rest period available,
 - Or interferes with ability to take rest period

Brinker To Do List:

- Adopt clear policies
- Communicate policies to employees: Handbooks, online, intranet, posting IWC wage orders — get acknowledgement
- Require employees to clock in/out for meal periods and certify they were provided rest periods and meal periods and did not work off the clock. Consider option for employees to check YES or NO on timecards

Actions:

- Make a good faith effort to furnish rest periods in the middle of the work period.
- State the general rule in your handbook
- Include timing (middle of 4 hour period if possible)
- Require employees to report immediately if anyone interferes with ability to take required rest period

Clarify Policies:

- Rest Period Policy — state the length of breaks and when they normally would occur.
- Meal Period Policy — state that employees are entitled to a 30 minute meal period for every five hours of work to begin no later than the end of the fifth hour of their shifts and that the break should be an uninterrupted period during which the employee is relieved of work-related duties.
- Off-the-clock Policy — state that employees

must not perform off-the-clock work and that they must record their time at work accurately.

Train and Evaluate:

- Provide training for supervisors on the clarified rules and all wage and hour laws as supervisors set the tone of a workplace
- Carefully evaluate Exempt/Non-Exempt/Independent Contractor Classifications

Questions:

Q. Did the Law Change?

- A. • No, the wording of the law as contained in both the Labor Code and the IWC Orders is not changed.
• The Decision clarified the language
• The court said that an employer's duty to “provide” meal periods is a duty to relieve employees of all duty, allowing employees to decide how to use the meal period.

Q. If the employer provides the meal period and the employee still continues to work, must the employer still pay the 1 hour penalty?

- A. No. According to the court, premium pay (an extra one hour's wage) is not required when the employer relinquishes control and an employee nevertheless decides to continue working.

Q. Employee is scheduled to work 6 hours, meal period has been waived, but employee works more than 6 hours. Is premium penalty due?

- A. No – If the employee chooses on his own to work beyond the 6 hours. Employer pays employee for time worked but does not have to pay the one hour premium penalty.

OR

Yes – If the employee continued working beyond 6 hours at the employer's request/direction. Employer pays for time worked + one-hour premium penalty

Q. Can I discipline an employee who refuses to take required rest periods and meal periods?

- A. Yes — An employee can be disciplined for failing to follow company policies and procedures. Also, an employee can be disciplined for insubordination (refusal to follow instructions from a supervisor).

Q. Should we have employees document Breaks and Lunches?

- A. Employers can adopt ways to document both meal and rest breaks on time sheets or through an online timekeeping program.

