EMPLOYMENT LABOR & WORKERS' COMPENSATION

ADVICE
SOLUTIONS
LITIGATION

Alfred J. Landegger
Larry C. Baron
Michael S. Lavenant
Corey A. Ingber*
*A Professional Law Corporation

Roxana E. Verano
Christopher L. Moriarty
Oscar E. Rivas
Marie D. Davis
Brian E. Ewing
Jennifer R. Komsky
Clifford J. Weinberg
Jack M. Lester
Nona E. Sachs
Sumithra R. Roberts

Main Office
15760 Ventura Blvd.
Suite 1200
Encino, CA 91436
(818) 986-7561
Fax (818) 986-5147

Orange County Office
333 City Boulevard West
17th Floor
Orange, CA 92868
(714) 923-8666
Fax (714) 923-8667

Ventura Office
751 Daily Drive
Suite 325
Camarillo, CA 93010
(805) 987-7128
Fax (805) 987-7148

www.landeggeresq.com

LANDEGGER | BARON | LAVENANT | INGBER

A LAW CORPORATION

Brinker Decision by California Supreme Court Clarifies Meal and Rest Period Obligations.

Dear Clients and Friends:

Yesterday morning, the California Supreme Court issued its long awaited decision in the case *Brinker v. Superior Court (Hohnbaum)*, S166350. The *Brinker* decision involved a class action against a number of restaurants operated by Brinker Restaurant Corporation, alleging that Brinker failed to provide meal and rest periods required by California law and required employees to work off the clock, and seeking to certify a class of approximately 60,000 restaurant employees.

The *Brinker* case centered on the proper interpretation of California's meal and rest period laws and regulations and how those interpretations inform and affect class certification. The central, and long anticipated, holding in this case is that employers need not ensure employees take 30 minute off the clock meal periods, but do need to provide meal periods, one for a shift longer than 5 hours, and a second for a shift over 10 hours. Also, employers need only "authorize and permit" 10 minute on the clock rest periods, for every 4 hour period of work or major fraction thereof. The *Brinker* decision outlined detailed requirements under the law, and the Court specifically ruled as follows:

As to 30 minute off the clock meal periods:

- A company's obligation is to provide (gave the opportunity for) employees to take meal periods, but not to "police" employees to ensure they took the meal period.
- The meal period must be at least 30 minutes, and the employee must be relieved of all duty and allowed to leave the work premises (except in limited circumstances.)
- Employees must be allowed to take one meal period if they work shifts over five hours, and that meal period must start no later than the end of the fifth hour of work.
- Employees must be allowed to take a second meal period if they work shifts over ten hours, and that meal period must start no later than the end of the tenth hour of work.
- The second meal period does not need to be provided within 5 hours of the first meal period.

It is important to note that even though an employer does not need to ensure employees take meal periods, if the employer actually knows that employees are not taking 30 minute meal periods in which employees are relieved of all duties and free to do what they want, it will be held liable. Also, if an employer has a policy that contradicts these regulations, it will be held liable, because the employee will not be given the opportunity to waive anything.

As to 10 minute rest periods:

- The employer must authorize and permit 10 minute on the clock rest periods for its employees. Again, the employer need not ensure they are taken by the employees.
- One 10 minute rest period must be provided for every four hours of work "or major fraction thereof." To calculate the number of rest periods required, an employer should divide the total number of hours of the shift by four, then round up if the fractional part is over 2 hours. For example, an employee who works 6 hours or more is entitled to two rest periods, not just one.
- The rest period must be provided in the middle of the four hour period "insofar as practicable."
- The first rest period need not necessarily be provided before the first meal period, if an employer's specific circumstances prevent it from doing so.
- However, an employee is entitled to no rest periods for shifts of 3 ½ hours or less.

The court in *Brinker* relied heavily on the existence of company-wide policies to decide whether the case should be certified as a class action. In fact, in *Brinker* the Court ruled that the portion of the case dealing with rest periods could proceed as a class action, because of Brinker's rest period policies. (The Court did not decide whether those policies violated the law.) Courts will first look to a company's meal and rest period policies (or lack of such policies) to help decide whether a lawsuit against the employer can be treated as a class action, because such policies show that the issue can be resolved for the entire class. This is just one factor, the company must also ensure that its practices do not impede employees from taking breaks. It will be the employer's burden to establish that the opportunity to take breaks was provided to employees.

Having specific policies that fully comply with the law, and these new Supreme Court rulings, is crucial for the defense of any class action that might be filed against your company. Companies who do not have such policies should work to implement policies as soon as possible and inform employees directly of these policies. Employers should also seek legal counsel to ensure their policies comply with these detailed requirements. The labor and employment attorneys of Landegger, Baron, Lavenant & Ingber are available to assist you.

By: Michael S. Lavenant, Esq.
Brian E. Ewing, Esq.
Oscar E. Rivas, Esq.
Released: 04-13-12