

Class Actions for Meal and Rest Periods

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Plaintiffs' attorneys have favored class action lawsuits for meal and rest periods because they can provide enormous fees, but the California 4th District Court of Appeals issued an opinion last week that may deter them from bringing these claims as often. The appellate court's opinion also provides helpful language for employers regarding meal and rest periods.

In *Brinker v. Superior Court*, there were five individual plaintiffs. The plaintiffs claimed, among other things, that Brinker Restaurant Corporation had not required its employees to take meal and rest periods as provided in the Labor Code and Industrial Welfare Wage Orders.

Brinker's employee policies stated that the employees understood that they were to take a half hour meal period if they worked more than five hours and that they understood that they were to take a ten minute rest period for every 3.5 hours that they worked. Brinker's employee policies provided that employees who did not take their meal and rest periods would be subject to discipline, up to and including termination of their employment.

The plaintiffs' attorneys sought to certify a class of more than 59,000 people who had or still worked for Brinker. They argued that the class members had common issues and questions in their claims, so it would be more efficient for the court to try the matters as a class action than to have each employee bring his or her own claim. The trial court certified the class.

The appellate court reversed the trial court's certification. As the appellate court noted, since the employer's policies indicated that it provided rest and meal periods, there would not be common issues because each employee will have to explain how or why they were denied rest and meal periods. These would not be common questions of fact, but would vary with each individual.

The appellate court's decision further holds that employers must only authorize and permit their employees to take meal and rest periods. Employers are not required to force their employees to take their meal and rest periods.

Governor Schwarzenegger and employers across the state have been pleased with this decision. The California Supreme Court reversed an earlier decision in this matter by the appellate court, and it is likely that the plaintiffs will appeal this decision, so it may not be wise for employers to rely too much on the appellate court's ruling here. But for now,

employers can enjoy having won at least one round in the on-going meal and rest period battle.