RESTAURANT HOSPITALITY

How to manage employee meal breaks: The new rules

A top labor attorney explains the effects a closely watched California case involving casual dining giant Brinker International will have on operators there and elsewhere.*

By John Douglas
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For several years, employers in the restaurant industry have been waiting for the California Supreme Court to decide the Brinker case, a lawsuit that involved two main issues. First, can California employers avoid liability for meal break penalties by maintaining policies that allow breaks to be taken even if they do not strictly police their implementation? Second, are meal breaks required on a "rolling" basis, or is their number based on the total number of hours worked?

The latter question has been particularly important for restaurant employees—many of whom prefer to get their shift meal (and break) at the start or end of a shift. If meal breaks are required on a "rolling" basis—as some have maintained—then an employee cannot take that break at the end of a shift. If he or she takes a meal break during the first hour of a shift, another is required five hours later—often just when a restaurant is busiest.

On April 12, 2012, the California Supreme Court finally released its decision. Employers were winners on both the main issues.

First, on the issue of whether California employers must "ensure" that employees take their meal breaks versus make them "available," the California Supreme Court summarized California employers' obligations about policing meal breaks in this way: "An employer's duty with respect to meal breaks under both [the Labor Code and Wage Orders] is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." "What will suffice may vary from industry to industry," the Court observed, but a California employer is "not obligated to police meal breaks and ensure no work thereafter is performed. Bona fide relief from duty and the relinquishing of control satisfies the employer's obligations."

On the question of "rolling" breaks, the text of the Labor Code did not support the plaintiff's views either. The Labor Code, the Court found, "requires a second meal after no more than 10 hours of work; it does not add the caveat 'or less, if the first meal period occurs earlier than the end of five hours of work.'" Nor, according to the Court, do the California Wage Orders—which it found "ambiguous"—compel a different conclusion. Thus, the Court found, the Labor Code "requires a first meal period no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee's 10th hour of work [absent a waiver]."

The Court also made clear, with regard to paid rest breaks, that employees "are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." As for their timing, the "only constraint" is that they "must fall in the middle of work periods "insofar as practicable." Employers need only make "a good faith effort," however, to "permit rest breaks in the middle of each work period, but may deviate from that preferred course where practical considerations render it infeasible."

What is the significance of Brinker? First and foremost, California restaurants should find compliance considerably easier. When class actions are brought in the future, such claims should also be easier to defend. The Court's "rolling five" decision should also save money for California employers who have been paying penalties automatically when employees do not clock out for lunch before the start of the sixth hour, and class claims based on the timing of paid rest breaks will be hard for plaintiffs to win now.

The bottom line for California restaurants—the wait for Brinker was well worth it.

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