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Brinker Restaurant Corporation v. Superior Ct.: The Takeaway on Meal and Rest Period Rules and Claims

Just yesterday, the California Supreme Court issued its ruling in *Brinker Restaurant Corporation v. Superior Ct. (Hohnbaum)*, No. S166350. The ruling ends the wait endured by California employers since October 2008 for clarification regarding their responsibilities and duties when providing meal and rest periods to their non-exempt employees, but raises additional issues concerning class procedure.

Background

Brinker Restaurant Corporation, which operates Chili's Restaurants and other casual dining restaurants in California, was sued in 2004 in a putative class action in which Plaintiff claimed that Brinker had failed to provide meal and rest periods, or had provided them at the wrong time in the shift. At issue was the nature of the obligation to provide meal and rest periods, the timing of that obligation, and the standards for class certification. The trial court certified classes on each claim, and did so without first defining the elements of those claims. The Court of Appeal reversed the trial court in its entirety on several grounds. The Supreme Court largely reversed the Court of Appeal on the class issues, reinstated the rest period class, and remanded questions of the amenability of the meal period claim to class treatment. Our discussion of the decision is in two parts: (1) the nuts and bolts of meal and rest period compliance; and (2) the Court's approach in evaluating whether class certification is appropriate.

The Nuts and Bolts of Meal and Rest Period Compliance

The Obligation to Provide Meal Periods, But Not to Ensure That They are Taken. At issue was whether an employer must ensure that employees take meal and rest periods, or merely authorize employees to take them and not dissuade them from doing so (leaving the employee to freely choose to take, or not take, a break). The Court concluded that under Industrial Welfare Commission "Wage Order No. 5[1] and Labor Code section 512, subdivision (a), an employer must relieve the employee of all duty for the designated period, but need not ensure that the employee does no work." "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, and we cannot in the context of this class certification proceeding delineate the full range of approaches that in each instance might be sufficient to satisfy the law."

[1] Wage Order 5 governs the Public Housekeeping Industry, which includes restaurants. Because most other wage orders contain identical provisions regarding meal and rest periods, the *Brinker* ruling on meal and rest periods applies to the vast majority of California employers.

The Frequency and Timing of Meal Periods. Labor Code section 512(a) states that an employee is entitled to one meal period if he/she works a shift of five hours, and a second if he/she works a shift of ten hours or more. Wage Order 5, subdivision 11(A), provides that "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes." Plaintiff argued the language of the Wage Order required an employer to provide a 30-minute meal period for any five consecutive hours of work. For example, Plaintiff argued that if an employee worked a nine hour day, and took his meal period in the first three hours of that day, there was a meal violation because a second meal period was not authorized for a period of in excess of five hours (notwithstanding that the employee did not work ten hours and thereby earn the second meal period pursuant to section 512(a)). The Court rejected Plaintiff's argument, and held that "no such timing obligation is imposed, and an employer satisfies its meal period obligations by providing one meal period for shifts over five hours and two meal periods for shifts over 10 hours."

However, the Court held that the first meal period must be authorized to commence by no later than the beginning of the sixth hour, and that any second meal period must be authorized to commence by no later than the beginning of the eleventh hour. The Court rejected Plaintiff's attempt to further circumscribe the timing of the authorization to commence the first meal period, and rejected Plaintiff's argument that providing the meal period before the employee's first rest break is *per se* illegal. Rather, the Court held, the order of rest and meal periods may be determined by business practicalities as long as all applicable breaks are timely provided.

The Frequency and Timing of Rest Periods. Like the Court of Appeal before it, the Supreme Court was asked to interpret the meaning of "major fraction" as found in Subdivision 12(A) of Wage Order 5 to determine the frequency with which an employer must provide rest periods. The Supreme Court, however, reached a conclusion contrary to that of the Court of Appeal. In a nutshell, the Court concluded that "[e]mployees 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."

Evaluating Whether Class Certification is Appropriate

The Court's analysis of the class issues is particularly interesting in at least one respect. Apart from repeating earlier holdings that a trial court's class decision must be afforded great deference, the Court held that a trial court may certify a class, and evaluate commonality, without first resolving disputes regarding the elements of the plaintiffs' claims. The Court stated that: "[w]hile we agree trial courts must resolve any legal or factual issues that are *necessary* to a determination whether class certification is proper, the Court of Appeal went too far by intimating that a trial court must as a threshold matter always resolve any party disputes over the elements of a claim." Rather, "[t]o the extent the propriety of certification depends upon disputed threshold legal or factual questions, a court may, and indeed must, resolve them."

The Court further noted that declining to reach questions of merit unless "necessary" to resolution of the class question may work to the employer's advantage because a defendant would otherwise be "in jeopardy of multiple class actions, with one after another dismissed until one trial court concludes there is some basis for liability and in that case approves class certification." It continued that "[i]t is far better from a fairness perspective to determine class certification independent of threshold questions disposing of the merits, and thus permit defendants who prevail on those merits, equally with those who lose on the merits, to obtain the preclusive benefits of such victories against an entire class and not just a named plaintiff." (Citing its own decision in *Fireside Bank v. Superior Court*.) Applying this, the Court held that "the certifiability of a rest break subclass in this case is not dependent upon resolution of threshold legal disputes over the scope of the

employer's rest break duties. The theory of liability — that Brinker has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law — is by its nature a common question eminently suited for class treatment."

On the other hand, given the Court's rejection of the notion that a meal period must be authorized in every five-hour period worked (discussed above), the Court rejected as a matter of law the trial court's certification of a meal period class premised on that theory. It held that "[a] grant or denial of class certification that rests in part on an erroneous legal assumption is error; without regard to whether such a certification might on other grounds be proper, it cannot stand." So, though a trial court need not resolve all disputes as to the elements of a claim in resolving the class certification issue, the Court held that where a class definition is tethered to a theory of liability that has been clearly rejected, a trial court cannot certify on that basis. This ruling would appear to conflict with the Court's discussion of the *Fireside Bank* doctrine and the "fairness perspective" offered earlier in connection with its analysis of the rest period class.

On the whole, the *Brinker* decision is a positive development for California employers, but raises additional and interesting issues concerning the amenability of claims with disputed elements to class treatment.

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