

Brinker Decision *FAQs*



Post-Brinker Review of Meal Periods for California Employers

Business & People Strategy Consulting Group LLC

Free Webinar Series

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Strategy Consulting Group, LLC

- California meal and rest period rules
- The Brinker case
- The results
- Tips for California employers



BPSC Group LLC & Your Presenter

Business & People Strategy Consulting Group LLC

- Established in 1998 as an HR consulting business.
- 16 years later offer HR, accounting, administrative, IT, e-commerce and management consulting services.
- Virtual and onsite services.
- We have and continue to serve employers from start-ups to 150K+ employee/multi-billion...across industries and the globe.

Your Presenter

- Dr. Carlyle Rogers
- 24 years HR experience
- Doctorates in law and psychology
- Specialist in employment laws and practices
- Author of 'Dirty Little Secrets: Declassifying the Employment Game'
- President & CEO of BPSC Group LLC

Meal Periods

- AKA Lunch Breaks
- Required for employees working over 5 hours in a workday.
 - 6 hours workday exception.
- Employee must be:
 - Relieved of all duty during meal period.
- Minimum 30 minutes
- Unpaid
- Must be provided prior to the end of the employee's 5th hour of work.



On-Duty Meal Periods

- Applies if not relieved of all duty.
- Counts as hours worked (including OT)
- Compensate at employee's regular rate of pay.
- May only be permitted when:
 - Nature of the work prevents the employee from being fully relieved.
 - Written and non-coerced agreement between employee and employer.
 - Examples include sole worker of coffee kiosk, sole worker in all-night store, remote security guard, etc.
 - Very risky and not recommended.



2nd Meal Periods

- Minimum 30 minutes
- Unpaid
- If the employee works 10 or more hours in a workday.
- Exemption is total hours less than 12.
- Must be provided no later than the end of the employee's 10th hour of work.
- May be waived:
 - Mutual and non-coerced agreement between employee and employer.
 - 1st meal period not waived.



Rest Periods (Breaks)

- No less than 10 minutes
- Paid
- Not required if the workday is less than 3 1/2 hours.
- Minimum requirement is 1 rest period for every 4 hours (or major fraction of) worked.
 - Major fraction = over 2 hours



Notes About Rest Periods

- 1st rest period should be taken between start time and meal period.
- 2nd rest period should be taken between meal period and end time.
- Can't be used to come in late or leave early.
- Can't be combined with meal period to extend time.



Examples

- **Employee works 3 1/2 hours**
 - No meal or rest period
- **Employee works 5 hours**
 - 1 X 10 minute break
- **Employee works 6-8 hours**
 - 2 X 10 minute breaks
 - 1 X 30 minute meal
- **Employee works 10-12 hours**
 - 3 X 10 minute breaks
 - 2 X 30 minute meals



Penalties

Meal Periods

If employer fails to provide the meal period consistent with the laws and regulations:

- Must pay 1 additional hour of pay at the employee's regular rate of pay for each workday that the meal period isn't provided (CA Labor Code 226.7)
- Potential fines and penalties
- Can go back 3 years

Rest Periods

If employer fails to provide either rest period consistent with the laws and regulations:

- Must pay 1 hour of pay per day a rest period was missed.
- Must be paid on following paycheck.

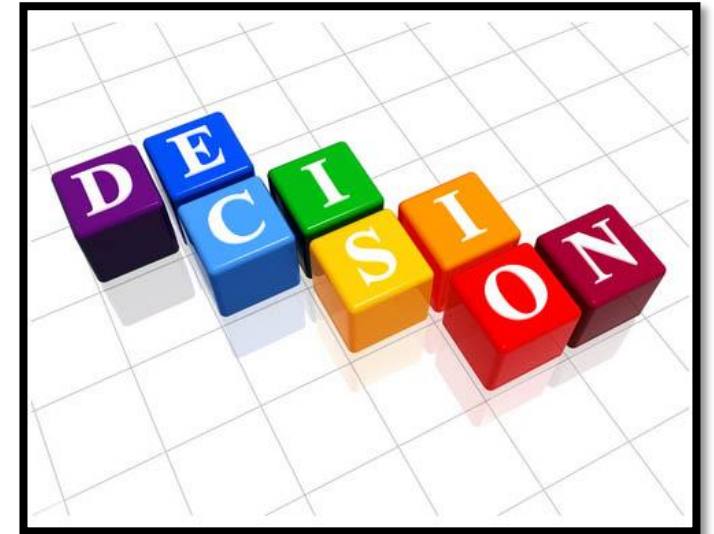
The Brinker Case

- Employees of Chili's filed suit in 2004
 - Alleged forced to work through state-mandated meal and rest periods
- Brinker has previously paid \$10M settlement to DLSE for shortchanging employees on meal and rest periods
- Issue of whether it was employer's duty to ensure that employees took their mandated meal and rest periods.



The Brinker Decision

- Employers need not force workers to take their mandated 30-minute meal periods.
- Duty is satisfied if the employer:
 - Relieves employee of all duties, and
 - Relinquishes control over the employee's activities, and
 - Permits the employee a reasonable opportunity to take an uninterrupted 30-minute meal period, and
 - Does not interfere with or discourage the employee from doing so.



Brinker Impact on CA Employers

- Employers no longer have to be the “meal period police”
- Plaintiff attorneys looking for creative ways to file wage and hour violations:
 - Employee unable to comply with the company’s written meal and rest period policies.
 - Nature of job prevents them from taking the meal and rest periods.
 - Employers lacking written meal and rest period policies.
 - Simply lacking the 3 words “or fraction thereof” in explanations of entitlements.
- Open question of what constitutes a “reasonable opportunity”.

Industries with Higher Risk

- Some industries historically are known for having challenges with meal and rest periods:
 - Restaurants
 - Retail
 - Hospitality
- Often due to inadequate staffing to save on labor costs.



Tips for Employers

- Have clearly defined and written meal and rest period policies that are consistent with the CA wage and hour laws.
- Ensure that meal and break periods are appropriately scheduled and compliant with the Brinker decision.
- Document meal and rest period times.



Questions?

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THANK YOU

If you would like to speak with one of our HR Consulting Team professionals please contact us at:

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