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## Meal and Rest Period Obligations in a State of Flux

In the past three years, California employers have paid out hundreds of millions in settlement of class action cases where it was alleged that the employer did not comply strictly with the state's complex rules involving meal and rest periods.

Last year, the stakes were quadrupled when the California Supreme Court ruled that employees could sue for four years of unpaid meal/rest period penalty compensation. Not surprisingly, in the wake of the high court's ruling, there has been a tremendous increase in the number of class action cases filed.

Just a few weeks ago, the Supreme Court agreed to hear yet another important meal period case. This one involves the Brinker International Restaurant chain, owner of Chili's, Macaroni Grill and Maggiano's Little Italy restaurants. The Brinker case raises two very important issues. First, what does the state law mean when it says that an employer must "provide" a meal break every time an employee works a shift of five or more hours? Does the employer meet this requirement if the employer merely makes the meal break available? Or, does it require that the employer ensure that each and every meal break is actually taken? Second, can these cases be brought under the guise of a class action? Or, must they be brought as individual suits because the reasons why someone might miss a meal break are so specific to the individual?

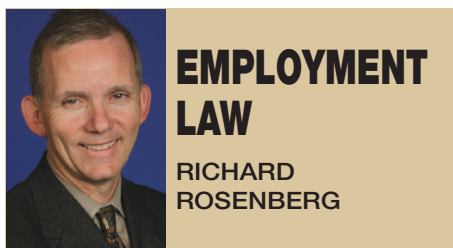
The Supreme Court is not expected to rule until sometime late next year. With the law in a state of flux and with so much at stake, here's a rundown of what you need to know to be sure your business is in compliance.

### Meal Periods

In California, an employer must provide an uninterrupted 30-minute meal break to every employee who works a period of more than five (5) hours. The meal period may be paid or unpaid.

If the employee's total shift is not more than six (6) hours and the employee agrees in writing to waive the meal period, this requirement may be waived.

The meal period must start before the end of the fifth hour of work. For example, if an employee's 8½ hour shift begins at 8:00 a.m. and ends at 4:30 p.m., the company must ensure that the employee starts a thirty (30)-minute meal period no later than 1:00 p.m. If the meal period comes too early in the shift, a second meal period may be necessary. Employees taking an earlier meal period must



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either take a second meal period within five (5) hours after completing the first one, or agree with their supervisor to waive the second meal period by completing and signing a meal period waiver form.

If an employee works more than ten (10) hours, the employee must be provided a second 30 minute meal break. However, where the employee's total shift is not more than twelve (12) hours and the employee agrees in writing to waive the second meal period, then the second meal period need not be provided.

According to employee advocates, there are several ways that a meal period violation can occur, even though the employee has had a meal break. Each violation is subject to a one hour penalty compensation payment.

- **Interrupted:** The entire meal period must be duty free. If an employee is interrupted during the meal period (i.e., asked to perform a work task or answer questions), a violation occurs and the employee must be given an additional 30 uninterrupted minutes

- **Not a full 30 minutes:** A violation will occur if the meal period is not a full thirty (30) minutes. The law does not specify what happens if the meal break is only short a few minutes. It's best to allow the employee a full 30 minutes.

- **Late/Early:** The meal period must be taken between the 3rd and 5th hour of work. If the meal period is taken after the 5th hour of work, a violation has occurred because the meal break was offered too late in the shift. If taken too early in the day, and the employee works five (5) hours thereafter, the employee would be entitled to yet another meal period.

- **Not able to leave:** Employees must be free to leave the premises for their meal periods. If they are required to stay on the premises, it is not considered a duty-free meal period and must be paid.

- **Cannot be Skipped or Waived:**

Unless a valid written waiver is in place, meal periods may not be skipped or waived by an employee, regardless of the inconvenience to the employee or the business. Excuses of "it was too busy" or "the employee did not want to

take a meal break" are not valid and should not be tolerated.

- **Cannot Combine Meal/Rest Periods or Forego the Meal to Leave Early:**

Employers may not combine rest periods and meal periods to give a longer meal break, even if the employee wants to do so. Nor, are employees allowed to leave early in lieu of taking a rest or meal break.

### Rest Periods

California law requires that employees who work more than three and one-half (3½) hours must be "authorized" and "permitted" to take a paid ten (10) minute rest period near the middle of each four (4) hour work period or major fraction. For example, if an employee's 8½ hour shift begins at 8:00 a.m. and ends at 4:30 p.m., the employee should take the first ten (10) minute rest break at approximately 10:00 a.m. and the second ten (10) minute rest break at approximately 2:30 p.m.

Unlike the meal period requirement, employees are permitted to skip or waive a rest period(s), so long as it can be proven that they were indeed "authorized" and "permitted" to take the rest break, and were not encouraged by management to skip the break. A written policy to this effect will help.

An employer may not add bits and pieces of employee break time together to reach the 10-minute requirement. Rather, the employee must be given 10 consecutive minutes and is entitled to a full 10 minutes for the actual rest period. As such, if it takes an employee 5 minutes to walk to and from a location where they are permitted to take a rest break, then the rest period needs to be 15 minutes, to ensure 10 full minutes of actual rest.

According to the California Labor Commissioner, allowing employees to use toilet facilities during working hours does not satisfy the employer's obligation to provide rest periods.

### Records

The Company must keep records of every employee meal period that show the actual start and end time of the meal break.

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