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## Brinker on class certification: only consider merits when necessary

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**T**he California Supreme Court provided some much needed guidance to employers and employees in its long-awaited decision issued April 12 in *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*.

The Court said that a meal period must be given “no later than the end of an employee’s fifth hour of work” and that the employer’s obligation is satisfied — and will avoid liability for premium pay — if the employer “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.” The Court also rejected the plaintiffs’ argument that a second meal period had to be given within 5 hours of the first one — also called the rolling 5-hour rule. The Court simply held that a second meal break must be provided, absent a waiver pursuant to Labor Code Section 512(a), “no later than the end of an employee’s 10th hour of work.” It should be noted, though, that the Court, while acknowledging that different industries may have different ways of trying to satisfy these requirements, refrained from providing guidance about what would be sufficient under this newly announced standard. Thus, we can expect there to be further litigation as employers implement new rules to comply with the law and employees learn what they are entitled to under the Wage Order and the Labor Code.

The Court also identified when rest breaks should be provided to employees and the number of rest breaks that need to be provided depending on the length of an employee’s shift.

Just as important as the holdings as to rest breaks and meal periods, are the Court’s pronouncements on class actions and what a trial court should, or should not, consider when addressing whether class certification is appropriate. Indeed, *Brinker* ended up before the Court as an appeal from the appellate court’s reversal of class certification of three different subclasses. Thus, the first part of the opinion focuses on principles of class certification that will apply to cases beyond those dealing with meal and rest break questions, or even just employment law matters.

*Brinker* held that as a general rule, when a trial court is determining if a matter qualifies for class certification or not, it should simply concern itself with whether or not common questions of law predominate, the claims or defenses are typical across the class, and there is adequate representation by the class representatives. Thus, a trial court should not resolve disputes between the parties over whether a claim is legally or factually meritorious. Rather, a merits determination should be left until the question of certification is answered. Of course,

that may not always be possible. Sometimes, the case’s merits are simply too intertwined with the requirements for certification to be set to the side at the certification stage. In such cases, the *Brinker* Court acknowledged that “[w]hen evidence or legal issues germane to the certification question bear as well on aspects of the merits, a court may properly evaluate them.” Still, if it is necessary to consider the merits to decide certification — something that should be done only if necessary — a trial court should consider only those “aspects of the merits” that will directly affect the certification decision. However, and in a direct rejection of the Court of Appeal’s decision, it was held that it is *not* automatically reversible error for a trial court to fail to resolve disputed legal issues that affect the elements of a claim.

Of course, *Brinker* does not and cannot address everything or answer every question regarding meal and rest break issues, or class certification issues. While *Brinker* provides some certainty and clarity, the only thing that is truly certain is that it will take further litigation to fully resolve all the questions surrounding these issues.



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