HUNTON& WILLIAMS

CASE HIGHLIGHT

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Major Developments In California Meal and Rest Break Class Action Litigation

Brinker Restaurant Corporation, et al. v. Hohnbaum, et al. (July 22, 2008)

It is no secret that wage and hour class action litigation has been a bane for many California employers in recent years. In particular, a number of aggressively litigated class action cases have been filed alleging that employers must force their California employees to take meal periods and rest breaks. On July 22, 2008, a California appellate court issued a much-awaited decision in *Brinker Restaurant Corporation, et al. v. Hohnbaum, et al.*, addressing these claims under California law. Across the board, this decision favors California employers. According to Hunton & Williams LLP partners Laura M. Franze and M. Brett Burns, who were part of a multifirm team that advised defendant Brinker International, Inc. during the defense of this case, the decision is anticipated to have "monumental impact" on wage and hour litigation in California.

This case was filed in San Diego Superior Court by plaintiffs seeking to represent a class of current and former nonexempt employees at the defendants' California casual dining restaurants, including Chili's Grill & Bar and Romano's Macaroni Grill. The plaintiffs alleged violations of various California Labor Code and wage order provisions relating to the provision of rest breaks and meal periods. The trial court certified a class estimated to consist of more than 60,000 individuals on alleged meal break, rest break and off-the-clock violations. Brinker sought permission to appeal the class certification ruling, which was granted.

In a July 22, 2008 decision, the California Fourth District Court of Appeal reversed class certification, holding that the trial court's class certification decision failed to address the elements of the plaintiffs' claims and relied upon improper criteria with respect to those claims. The opinion is notable and has received much publicity, however, because it set forth a legal framework under which the plaintiffs' meal period claims must be evaluated under California law.

Illustrating how important the definition of a single word can be, the court of appeal held that an employer need only *provide* meal periods, not *ensure* that employees take their meals. The appellate court rejected the contention that employers are obligated to ensure meal periods are taken. "If this were the case," the appellate court stated, "employers would be forced to police their employees and force them to take meal periods. With thousands of employees working multiple shifts, this would be an impossible task." While an employer cannot actively "impede, discourage or dissuade" employees from taking

meal periods, they must do something affirmative to provide the meal period (as opposed to "merely … assuming that the meal periods were taken"). Importantly, the appellate court stated further that resolving these issues in the case before it would require individual inquiries, rendering the meal period claims at issue inappropriate for class treatment.

The appellate court also rejected the trial court's determination that employers must provide a 30-minute meal period for every five consecutive hours worked. The plaintiffs had argued that employees should receive a second meal period five hours after they return from the first meal period. According to the plaintiffs, if an employee working an eight-hour shift takes a lunch one hour into his or her shift (as many restaurant workers may do to permit working during busy lunch or dinner rushes when they may have the opportunities to earn the most tips), the employer must provide a second meal period five hours after the employee returns from the first meal break. In overruling the trial court, the appellate court ruled that this interpretation of the law was incorrect. In pertinent part, California Labor Code § 512(a) provides that an employer must provide a 30-minute meal period for any employee who works more than five hours per day, with a second meal period being required if an employee works more than 10 hours per day. The appellate court held that the trial court's adoption of a "rolling" five-hour meal period requirement is inconsistent with the plain language of both the statute and the relevant wage order.

The court of appeal further held that California law requiring rest periods "for every four hours or major fraction thereof" does not mean that a rest period must be given every three and one-half hours, or every two hours, as was advanced by plaintiffs, and does not require that employers provide rest breaks before meal period breaks. The appellate court explained that under the applicable California regulations, employers have some discretion in scheduling a worker's breaks and "[a]s long as employers make rest breaks available to employees, and strive, where practicable, to schedule them in the middle of the first four-hour work period, employers are in compliance." In a further blow to class-wide litigation, the appellate court held that, on the record before it, the determination of whether it is practicable to permit rest breaks near the end of a four-hour work period cannot be litigated on a class-wide basis.

California Hunton partners Laura Franze and Brett Burns may be contacted with questions about this case or other concerns employers may have concerning California employment or wage and hour law.