

Another California Court Holds Employers must “Make Available,” not “Ensure” meal Breaks

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For the past few years, California courts have been inundated with lawsuits filed by employees claiming that they did not receive their thirty-minute uninterrupted meal breaks per Labor Code section 512, which provides that:

(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

The point of contention has been, and continues to be, whether the term “providing” as used in the statute means that the employer must “ensure” that meal breaks are affirmatively given to employees and taken by employees, or, alternatively, whether it means that employers must merely “make available” the opportunity to take meal breaks, if so desired. This is the issue which is presently being considered by the California Supreme Court in connection with the *Brinker v. Superior Court* case (and the numerous other related matters).

On Friday, September 9, 2011, in the case of *Driscoll v. Graniterock*, the Santa Clara County Superior Court joined the ranks of several other California courts in holding that employers must merely make breaks available to its

employees.

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