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Raising Questions to California's Meal and Rest Break Laws

Last month, the United States Court of Appeals for the Ninth Circuit certified two questions of state law to the California Supreme Court:

1. Does the absence of a formal policy regarding meal and rest breaks violate California law?
2. Does an employer's failure to keep records for meal and rest breaks taken by its employees create a rebuttable presumption that the meal and rest breaks were not provided?

The answers to these questions could profoundly affect the way employers in the state notify employees and keep records of meal and rest breaks.

These questions arose in the case, *Cole v. CRST Van Expedited [9th Cir. No. 17-55606]* where the plaintiff challenged the employer's meal and rest break policy under California law. The Court granted summary judgment for the employer, finding that the employer did not violate California's meal and rest break laws because: 1] Mr. Cole was verbally instructed upon hire not to work for more than five hours without taking a meal break, and to take a rest break whenever he deemed appropriate; and, 2] Mr. Cole failed to identify even a single instance where he was forced to skip a break due to business needs.

Mr. Cole timely appealed to the Ninth Circuit. The Ninth Circuit did not find the issues so clearly resolved. In its preliminary analysis, the Circuit Court noted certain blind spots in state Supreme Court precedent, specifically concerning the Court's opinion issued in *Brinker Restaurant Corp. v. Superior Court [2012] 53 CAL.4TH 1004*.

While *Brinker* spoke definitively regarding a California employer's obligations in relieving employee for meal and rest breaks, the Court intentionally avoided the question of whether California law requires an employer to publish a uniform policy regarding said breaks to its employees. The *Brinker* court also left the Circuit confused as to who bears the burden of proving whether an employee received their meal or rest breaks for a given period. In a concurring opinion in *Brinker*, Justice Werdegar indicated that an employer's failure to keep records of meal and rest breaks should create a rebuttable presumption

that no break was provided. However, the California Court of Appeal has declined to apply this presumption as it was articulated in the *Brinker* concurrence only.

While there is no expected timeframe for the Supreme Court's response to these questions, employers should take note; an answer in the affirmative to either of these questions could create significant compliance issues for employers requiring immediate attention.

Regardless of the answers to these questions, maintaining clearly written, published policies and tracking employee breaks are two best practices to help protect your business from costly litigation.