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With Brinker, on the brink of a new era in labor law

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Law

Across the region, labor attorneys and regulators alike are waiting on Brinker.

The California Supreme Court agreed to hear Brinker Restaurants v. Superior Court back in October 2008. The case centers on whether employers are required only to provide employees meal breaks, or to ensure that the employees take them. The cases is fully briefed and waiting on oral arguments, putting a lot of class-action suits on hold.

The Brinker case touches on one of the most active areas of employment law, said Paul Rodriguez, the senior deputy labor commissioner for Ventura, Santa Barbara and San Luis Obispo counties.

"The No. 1 thing that creates a lot of work here is the meal period and rest period premium pay," Rodriguez said. "Since the year 2000, employees have been able to make allegations that the employer did not permit them to have a free-from-duty meal period and 10-minute rest period. Once [Brinker] is determined, we'll be dealing with them on the impact of the Brinker case."

Curtis Graham, an attorney with Nordman Cormany Hair & Compton in Oxnard, said he's seen an uptick in wage and hour complaints since the California Supreme Court ruled that the violations should be treated as unpaid wages rather than penalties. That means plaintiffs can seek an hour of wages for each missed meal or rest period going back three years, rather than the one-year limitation effective on penalties. "Even though it's an old claim, it's still quite active," Graham said.

The meal and rest period laws also don't change based on workers' desires. Sometimes workers will ask an employer to move a meal period to late in the day, or ask to skip a meal or rest period to take off early. But even if the employee agrees, it's too risky for the employer until the law becomes clearer.

"One of my smaller employers incorrectly assumed that because an employee asked for this, it was legal to do it," said Lou Cappadona, also of Nordman Cormany. "I had to tell them, 'No, it isn't legal to do it.'"

On a recession-related note, telecommuters and remote workers have become attractive options for cash-conscious companies. But an employer's labor law requirements remain the same.

"The problem for employers is that they don't really know how much time someone is working, except when [the employee] logs on their computer or logs off," said Bruce Anticouni of Santa Barbara's Anticouni & Associates. "That doesn't mean they're sitting at their desk and being productive, and for the employee, they may not be getting paid for overtime."

Rodriguez said the labor commissioner's office looks to record keeping as crucial in telecommuter disputes. "An employer does have an obligation to maintain records of hours worked," Rodriquez said. "An employer's failure to maintain accurate records would be a key element to determining whether there's any merit to the claim."

Another emerging issue in California labor law is whether corporate officers can be held personally liable in wage claims. That's been the case under federal law for some officers and directors, and California is moving that way as well. It's meant for the most egregious incidents — say, where a company officer stiffs employees to line his or her own pockets just before the business folds.

"The division has a position that an individual officer can be held personally liable if they have a certain amount of financial control in deciding who to pay and who not to pay," Rodriguez said. "It's a very controversial area, but the division does take a look."

Rodriguez, Graham and Cappadona will be holding a half-day labor law seminar Wednesday, May 19, at The Palm Garden Hotel, at 495 N. Ventu Park Road in Thousand Oaks. Registration starts at 7:30 a.m. and is $90.

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