



## **Let Them Eat Cake...but Follow These Rules: Compliance with California's Mandatory Meal Break Statutes**

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The California Supreme Court's recent decision on mandatory meal breaks leaves employers with three options to comply: provide the break, agree upon a waiver, or let the employee eat "on duty." That may sound simple, but employers should understand the details and the requirements.

California Labor Code states that an employer must provide employees with a meal period of not less than 30 minutes for workdays lasting more than five hours and provide two meal periods for workdays in excess of 10 hours. To satisfy this requirement, however, employers have certain options.

### **1. Employers may provide the standard off-duty meal period.**

An employer satisfies its duty to provide an off-duty meal period if it "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." That means the employee must be free to leave the premises and mustn't be interrupted or asked to perform any work during the 30-minute meal period. An employer complies so long as it *provides* the break; although it is not required to enforce or ensure that employees do not, in fact, work through that time, it may not pressure or otherwise coerce employees to work through or skip breaks.

### **2. Sometimes, employers and employees may consent to a mutually agreed-upon waiver.**

If an employee's entire shift is six hours or less, the employer and employee may agree to waive the meal period requirement. Also, if an employee has taken a compliant off-duty meal period within the first 5 hours of his or her work period, and the employee's entire shift is less than 12 hours, the second required meal period may be waived by agreement. Employers should be very cautious regarding requests to waive both required meal periods in a 10-12 hour shift, however, as current caselaw is conflicting on this issue and allowing this practice may result in a violation.

### **3. Rarely, employers may obtain a written agreement to an "on-duty" meal period.**

In certain circumstances, due to the nature of an employee's work, it may be impossible for that employee to be completely relieved of duty for an uninterrupted 30-minute meal break. In those circumstances, an "on-duty" period to eat a meal can be permitted. This on-duty meal period must be paid at the employee's regular rate of pay, and counts as time worked for purposes of determining overtime premium eligibility. The employer and employee must enter into a written agreement meeting certain conditions (including setting forth an employee's revocation rights) to ensure compliance with this limited exception.

If an employer fails to do one of those three things, it is liable for "premium" pay of one hour of pay for each workday the meal period isn't provided.

Be mindful that employers must maintain accurate records of employee time-keeping – reflecting actual time worked by each employee, and noting any "on-duty" meal periods – for the previous three year period, and penalties may be levied under the Labor Code for failure to maintain these records properly.



In light of these changes, and others recent updated requirements related to employment and wage and hour laws and regulations, it's a great time for employers to check in with their attorneys and ensure their policies are updated, current and compliant.

*See also California Labor Code Section 512; California Code of Regulations, Title 8, §11040; Brinker Restaurant Corp. v. Superior Court of San Diego County, \_\_\_ Cal.4th \_\_\_ (April 12, 2012) [Slip Opn., at 1, 4]. [Download PDF of Brinker v. Superior Court.](#)*