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There's No Such Thing As a Forced Lunch, Justices Declare

The California Supreme Court's decision that employers do not have to force workers to take meal breaks will sharply reduce the number of class-action claims by employees over meal and rest breaks. Or maybe it won't.

Ending nearly five years of uncertainty, the court ruled unanimously that as long as employers ensure their employees are unequivocally given a break without in any way being asked to work during it, the employees may still work if they wish.

"[A]n employer's obligation is to relieve its employee of all duty, with the employee thereafter at liberty to use the meal period for whatever purpose he or she desires, but the employer need not ensure that no work is done," the Supreme Court said in *Brinker Restaurant Corp. v. Superior Court*.

The employer may not try to impede an employee from not working through coercion, encouragement or incentives, the court said. But "the employer is not obligated to police meal breaks and ensure no work thereafter is performed."

However, if an employee does work during a meal period — and the employer knows or should know about it — the employee must be paid normally.

Employees must get 10-minute rest breaks every four hours or major portion of four hours on the job, the court said. For instance, someone working six to 10 hours should get two rest breaks.

In another win for businesses, the court ruled that employees who take an early lunch aren't required to get another five hours later. During oral arguments, justices had surprised lawyers by asking whether state labor regulations require meal breaks every five hours. In its decision, however, the court decided the regulations mean only that an employee must be given a meal break at least by the start of the sixth hour on the job and, if he works that long, another by the start of the 11th.

Attorneys for employers see the long-awaited decision as a victory that could finally clamp down on class-action litigation over meal and rest breaks. All an employer needs, they say, is a very clear policy

unequivocally relieving workers of any and all duties while on break and a commitment to abide by the policy.

They also point to another new Supreme Court decision that came out just weeks after *Brinker*. At the end of April, the court held unanimously that neither plaintiffs nor defendants can win attorney fees for litigation over meal or rest breaks.

Although two different state Labor Code sections allow for attorney fee awards in some wage cases, the high court ruled in *Kirby v. Immoos Fire Protection Inc.* that the statute requiring meal and rest breaks is not a statute about wages. "In other words, a [Labor Code] section 226.7 action is brought for the nonprovision of meal and rest periods, not for the 'nonpayment of wages.'"

Without the possibility of large fee awards, plaintiffs' attorneys will be much less likely to sue over breaks, the employers' attorneys believe.

Plaintiffs' attorneys, on the other hand, say businesses could still be liable if managers try to pressure employees to work through break, despite contrary written policies. Companies not paying for work done by employees on break also could be sued.

As for fees for class suits, those might be based on other causes of action besides the meal and rest breaks.

Courts Slip Both Ways on Noticing Dangerous Conditions

For an injured customer to blame a slip-and-fall injury on a property or business owner, he generally has to show that the owner was to some degree responsible for a dangerous condition that caused the fall. To do that he must show, among other things, that the owner knew or should have known about the condition — in other words, that the owner had notice.

But like many concepts in slip-and-fall law, the idea of notice is, well, slippery.

Consider two recent decisions from California Courts of Appeal. In one, the court held a store owner liable for a fall caused by a spill the owner didn't know about. In the other, a hotel chain was not liable for a fall in a bathtub the hotelier knew to be slippery.

"This is a not a typical slip and fall case" the court began its opinion about the jewelry store case, *Getchell v. Rogers Jewelry*. An independent-contractor jewelry repairman slipped in cleaning solution on the floor of the employees-only break room. The plaintiff contended some store employee must have failed to properly close the spigot on the solution bucket, allowing the solution to drip out.

The trial court held that because the plaintiff couldn't show how the fluid leaked out, he had no evidence to counter the store owner's denial of any "actual or constructive knowledge of a dangerous condition."

But the appellate court said that, under the doctrine of respondeat superior, the owner was responsible for its employees' negligence. Therefore, in this case the issue became "whether the dangerous condition was created by the negligence of an employee over whom the [store owner] had control."

Although the owner had no way of knowing about the spill, the question was whether the facts raise "a reasonable inference" that an employee caused the spill. Because the facts here allowed that inference, the court ruled, "the defendant is charged with notice of the dangerous condition."

In the hotel case, Howard v. Omni Hotels, Omni Hotels Management Corp. knew that a few guests in Connecticut had been injured by falling in a particular model of bathtub. The injured plaintiff in this case, who fell in a tub at the San Diego Omni, claimed those cases put the hotel chain on notice that something was wrong with the tubs.

The appellate court agreed that prior incidents similar to the plaintiff's accident could put the hotel on notice about a dangerous condition in the tubs. To amount to notice, however, evidence must show that the proposed "similar accident must have occurred under substantially the same circumstances" as the plaintiff's, the court said.

The accident reports about the Connecticut didn't meet that test, the court ruled. They "do not show substantially similar accidents, regarding any detail about the conditions of or in the bathtubs, or the circumstances or medical conditions of the guests before they fell in the bathtubs." At best, they "support only speculation or conjecture" about dangerous tubs.

"On this bare record, we cannot base our decision on some alleged inadequacy of Omni's safety policies and/or communication among its hotels," the court held.

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The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.