

OFFICE OF THE GENERAL COUNSEL

Practice Group Advisory

June 12, 2012

Charles F. Robinson
General Counsel
Vice President for Legal Affairs

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SUMMARY

The California Supreme Court's highly publicized *Brinker* decision clarifies meal and rest break requirements for private sector employers but has little effect on the University.

If you have any questions regarding the University's meal or rest break requirements, please contact:

Allison Woodall
Managing Counsel
Labor, Employment & Benefits
Allison.Woodall@ucop.edu

Shondella M. Reed
Counsel, Labor & Employment
Shondella.Reed@ucop.edu

This practice group advisory is issued by the Office of the General Counsel to provide updates regarding important legal and regulatory developments that affect the University. For additional information or assistance with a specific legal matter, please contact the Office of the General Counsel.

THE LONG-AWAITED *BRINKER* DECISION WILL HAVE LITTLE IMPACT ON UNIVERSITY PRACTICES

The California Supreme Court recently issued its decision about state law requirements for employee meal and rest breaks in *Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1004. While the decision is largely good news for private sector employers, it has little effect on the University because the state meal and rest break requirements do not apply to public sector employers.

The California Labor Code and the state Wage Orders contain rules on meal and rest breaks applicable to private sector employers. They generally require employees to receive a 30-minute unpaid meal break for each work period of five hours or more and a ten-minute paid rest break for every four-hour work period. Employers that don't provide employees with meal or rest periods must pay a penalty of one additional hour's pay for each day the meal or rest period was not provided.

The *Brinker* decision resolved a question that had received considerable debate: whether employers must ensure that employees actually take the meal and rest breaks or must simply make them available. The Court held that an employer has complied with the law if it allows its employees a reasonable opportunity to take duty-free meal breaks even if the employees choose not to take those breaks – provided that the employer compensates the employees for the time worked. The decision also clarified when meal and rest breaks must occur during the work day under state law.

The federal Fair Labor Standards Act (FLSA), which applies to the University, does not require employers to provide meal or rest periods. University policy and existing collective bargaining agreements govern when meal and rest breaks should be provided. Under the *Personnel Policies for Staff Members*, Policy 31 (Hours of Work), non-exempt staff employees should receive a 30-minute unpaid meal period that is substantially duty-free for any work period of six continuous hours or more. Full-time employees may also be provided with two paid 15-minute rest periods each day, one in the work period prior to the meal break and one afterward. Part-time employees may be granted one 15-minute paid rest period for each work period of three continuous hours or more, not to exceed two rest periods per day. Meal and rest period requirements for represented employees are addressed in the applicable collective bargaining agreements.

Although the *Brinker* decision will have little effect on the University's meal and rest period practices, it serves as a good reminder of the importance of compliance with existing meal and rest break requirements in policy and labor agreements. Non-exempt employees who are entitled to meal breaks should be provided with those breaks; if a meal break cannot be provided due to business needs, employees should be compensated for that time as hours worked.