

***Brinker* Update**

As expected, the plaintiffs in *Brinker v. Superior Court* filed their petition for review with the California Supreme Court on August 29, 2008. The California Supreme Court now has up to 60 days to decide whether to review the *Brinker* decision, and may grant itself an additional 30-day extension if it desires.

The *Brinker* decision determined that "while employers cannot impede, discourage or dissuade employees from taking meal periods, they need only provide them and not ensure they are taken." The *Brinker* decision also determined that meal periods may be scheduled at any time. Consistent with this decision, the California Division of Labor Standards Enforcement ("DLSE") (the state agency charged with enforcing California's wage and hour laws) has adopted the *Brinker* decision for its enforcement of California law.

If the Supreme Court accepts review, it could take up to a year, or even more, before the Supreme Court issues an opinion. Moreover, once review is accepted, the favorable *Brinker* decision can no longer be relied on by employers. However, the cases underlying the decision and the appellate court's reasoning could still be used.

Although the *Brinker* decision is currently "good law," and the DLSE has changed its position consistent with *Brinker*, we are recommending that, until we know how the Supreme Court will act, employers continue to ensure that their employees actually take their full 30-minute meal breaks, starting no more than 5 hours after the beginning of an employee's shift.

Of course, if you have any questions on how *Brinker* affects your business, please do not hesitate to contact us.

If you have any questions regarding this client alert, please contact Beth Schroeder at 310.282.9400 or via email at bschroeder@silverfreedman.com.