Brinker’s unique impact on the health care industry

By Daniel J. McQueen

Much has been written about the Supreme Court’s recent holding in Brinker Restaurant Corp. v. Superior Court and its impact on meal and rest period rules. Somewhat hidden away in the opinion, however, are several important holdings from the Court about the unique meal period regulations that apply to the state’s hospitals.

According to the Hospital Association of Southern California (HASC), there are currently 367 acute-care hospitals operating in the state. In just the six counties represented by HASC (Los Angeles, Orange, San Bernardino, Riverside, Santa Barbara and Ventura), hospitals collectively employ more than 500,000 individuals and generate about $33 billion in annual revenue. Thus, any Supreme Court authority relating to hospital employees is significant.

Brinker, of course, established a generally applicable rule that meal period requirements are “satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period.” Concerning the timing of meal periods, the Court determined that employers must typically provide a first meal period “no later than the start of an employee’s sixth hour of work” and a second meal period no later than “the start of the 11th hour of work.” The Court further noted that an employee may normally agree to waive the second meal period so long as the total shift length is no more than 12 hours and the first meal period was not already waived.

However, for hospitals, these generally applicable rules are not the end of the story. As Brinker made plain, the Industrial Welfare Commission (IWC) has broad statutory authority to issue wage orders that regulate wage and hour matters. Wage orders are entitled to “extraordinary deference” and “are to be accorded the same dignity as statutes.” Moreover, the IWC may lawfully “adopt requirements beyond those codified in statute ... ; that is, the Legislature did not intend to occupy the field of meal period regulation.” Thus, through its wage orders, the IWC may implement industry-specific rules which differ from the generally applicable ones analyzed by Brinker. For hospitals, Brinker confirmed that this is precisely what the IWC has done.

Hospitals are governed by Wage Orders 4-2001 and 5-2001. As Brinker pointed out, these wage orders contain unique provisions concerning meal period waivers that apply only to health care employees and that are not present in any other wage order. Under the general rule, employees cannot waive a second meal period in any shift longer than 12 hours. However, as confirmed by Brinker, a health care employee working in a hospital may waive a meal period “even on shifts in excess of 12 hours.”

This ruling directly impacts numerous wage and hour class actions pending against hospitals. Many hospital employees work 12-hour shifts where they agree to waive one of the their two meal periods. This makes sense. If a 12-hour employee takes two, 30-minute meal periods in the day, the employee is effectively at work for 13 hours. In contrast, if only a single 30-minute meal period is taken, the employee leaves after just 12-and-a-half hours.

Of course, many 12-hour employees sometimes work over 12 hours in the day to finish up with a patient or to cover for a late coworker. In this situation, many plaintiffs have argued that the employee’s meal period waiver is automatically nullified because the shift lasted more than 12 hours. Thus, for each day the employee worked over 12 hours and only took a single meal period, these plaintiffs contended that a meal period premium was owed.

In defense, the hospitals pointed to the specific health care provisions of Wage Orders 4-2001 and 5-2001, arguing that hospital employees are uniquely able to waive daily meal periods even on shifts over 12 hours. Prior to Brinker, there had been no clear guidance about which position was correct. Brinker resolves the issue, firmly establishing that health care employees governed by the Wage Orders 4-2001 and 5-2001 may waive meal periods even where they work more than 12 hours.

By acknowledging that the IWC has the authority to issue industry-specific requirements, the Court heightened the need for practitioners in the area to consider any unique rules that apply.