Guards' Class Action for Meal and Rest Periods, Unpaid Overtime to Proceed, California Court Rules in Post-*Brinker* Decision

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Brinker Decision' />

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Reversing the denial of class certification in an action for meal and rest period violations and unpaid overtime under California law brought by private security guards, the California Court of Appeal has ruled that the plaintiffs' claims were amenable to class treatment because they alleged that the employer had unlawful, uniform policies regarding meal and rest periods. *Faulkinbury v. Boyd & Associates, Inc.*, No. G041702 (Cal. Ct. App. May 10, 2013). Likewise, the Court held the employees' claims that the employer incorrectly excluded certain reimbursement payments and bonuses from the calculation of overtime also were subject to common proof and could be resolved on a class basis.

Background

Josie Faulkinbury and William Levene worked as security guards for Boyd & Associates, a company providing security services to gated residential communities, hospitals, commercial buildings, and retail stores in Southern California. Faulkinbury and Levene, on behalf of themselves and approximately 4,000 other similarly situated employees (the "guards"), sued Boyd, alleging the employer failed to provide meal and rest periods in violation of the California Labor Code (Section 226.7) and applicable state Wage Orders. The guards also claimed that Boyd failed to include certain reimbursements and an annual bonus payment in calculating their regular rate. The guards moved for class certification in 2008.

In support of their motion, the guards submitted evidence showing that, upon hiring, Boyd required each guard to sign an agreement to take an on-duty meal period as the nature of the employee's work prevented the employee from being relieved of all duties during the meal period. Boyd paid the guards their "regular rate of pay" for those meal periods. The guards also submitted evidence showing that, while employed by Boyd, they were instructed not to leave their posts, except to use the restroom, and did not take any off-duty rest breaks. Further, they claimed Boyd did not include a uniform allowance, gas reimbursement or annual bonuses in the calculation of their regular rate for overtime.

The trial court denied the guards' motion for class certification, and the guards appealed to the Court of Appeal. The Court affirmed the order denying certification on the meal and rest period claims, but reversed the order denying certification on the overtime claims. *Faulkinbury v. Boyd & Associates, Inc.*, 185 Cal.App.4th 1363 (Cal. Ct. App. 2010). Following that decision, the California Supreme Court issued its decision in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), which addressed the standards for class certification of meal and rest period claims. The California Supreme Court then granted review of this case and subsequently directed the Court of Appeal to reconsider its decision in light of *Brinker*.

Applicable Law

The California Supreme Court instructed in *Brinker* that to certify a class, a court must find: (1) "the existence of an ascertainable and sufficiently numerous class"; (2) "a well-defined community of interest"; and (3) "substantial benefits from certification that render proceeding as a class superior to the alternatives." The community of interest requirement, in turn, has three criteria: (1) common questions of law or fact that predominate over individual questions; (2) the class representatives have claims or defenses that are typical of the class; and (3) the class representatives can adequately represent the class.

When addressing whether common issues predominate, the California Supreme Court stated that a trial court should "examine the allegations of the complaint and supporting declarations and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible." The Supreme Court emphasized that "claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment."

Appellate Court Reverses Course

After reviewing the guards' claims in light of *Brinker*, the Court of Appeal concluded that common issues of fact predominate over individual issues in determining whether the employer was liable for failing to provide meal and rest periods and for unpaid overtime.

Addressing the meal period claim, the Court reviewed the guards' allegations that Boyd had an unlawful, uniform policy of requiring employees to sign an on-duty meal period agreement and take on-duty meal periods. The Court next examined the alleged policy in light of the Labor Code. Although the Court did not determine whether the alleged policy was lawful, it ruled that the question of its legality could be determined on a classwide basis, saying, "Liability turns on the issue whether Boyd's policy requiring all security guard employees to sign blanket waivers of off-duty meal breaks is lawful."

Turning to the rest period claim, the Court reviewed the guards' allegations that Boyd required the guards to remain at their posts at all times, except to use the restroom. The Court stated the guards' theory of recovery was based on Boyd's uniform "lack of a rest and meal break policy and its (uniform) failure to authorize employees to take statutorily required rest and meal breaks," all of which were subject to common proof and thus were amenable to class treatment.

The Court then examined whether the guards' claims for unpaid overtime based on Boyd's exclusion of certain uniform allowances, gas reimbursement and annual bonuses from their regular rate was amenable to class treatment. The Court concluded that this claim could be decided on a classwide basis, too, although eligibility for recovery would be shown on an individual basis. Accordingly, the Court reversed the denial of class certification on all claims and returned the case to the trial court.

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Faulkinbury provides guidance regarding analyzing wage-hour class actions post-*Brinker*, specifically distinguishing class analysis from merits analysis. Here, the employer's policies regarding meal and rest periods were clear and the question of their legality could be resolved globally. However, in many class actions, the existence of policies and their application require individual factual inquiries, which are less amenable to class treatment.

If you have any questions about this decision or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.