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California Supreme Court to Take Up Meal and Rest Break Case

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A major employment law decision over meal and rest breaks will get California Supreme Court scrutiny, the justices decided Wednesday.

The 4th District Court of Appeal in July concluded that while employers can't discourage employees from taking rest periods, they do not have to ensure the breaks are taken and can only be held liable for employees working off the clock if they were or should have been aware of them doing so. *Brinker Restaurant Corp. v. Superior Court of San Diego County*, D049331.

The July opinion was a major victory for employers and their attorneys who said employees could now be treated as adults capable of deciding when to eat their lunches.

But the Supreme Court's decision to take up the matter gives another chance to attorneys arguing that employers are receiving too much lee-

way to avoid providing employees break times.

The court voted 6-0 in favor of taking the case, with the absence of Justice Kathryn Werdegar.

"I'm very pleased and particularly glad that the Court of Appeal opinion is no longer a citable precedent in California courts," said Kimberly Ann Kralowec of Schubert Jonckheer Kolbe & Kralowec in San Francisco, who argued on behalf of the workers. The court has not set a date for oral arguments.

"This is a great day for workers," said Todd Schneider, an attorney with Schneider Wallace Cottrell Brayton Konecky in San Francisco. "California has always had strong worker protection and perhaps the Supreme Court will restore that."

Brinker Restaurant Corp. operates 137 restaurants in California, including Chili's Grill & Bar, Romano's Macaroni Grill, and Maggiano's Little Italy.

Rex S. Heinke of the Los Angeles law office of Akin Gump Strauss Hauer & Feld, who repre-

sented Brinker, directed calls to the company's public relations office. The company released a statement that said Brinker believes the Court of Appeal was correct in its decision, but looks "forward to advocating to the Supreme Court that their decision be upheld."

Attorneys who handle similar cases on behalf of employers said they were not surprised the justices agreed to review the case.

"There's been a lot of attention given to this issue," Natalie Pierce, a shareholder in Littler Mendelson's San Francisco office. "I do believe the Supreme Court will uphold the decision, and hopefully that's not just wishful thinking."

Wendy Lazerson, attorney and co-chair of the labor and employment group in Bingham McCutchen's East Palo Alto office, agreed.

"I would have liked it if [the court justices] had declined," she said. "But I'm not ruling out they might do the right thing."

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