

## Two Rest Breaks Are Better Than One, According To A New California Appellate Court Decision

For the first time, a California court of appeal holds that an employer cannot combine two 10-minute rest breaks into one 20-minute rest break to comply with California's rest break requirement for non-exempt employees. According to the court in *Rodriguez v. E.M.E., Inc.*, 16 C.D.O.S. 4348 (Cal. Ct. App. April 25, 2016), "rest breaks in an eight hour shift should fall on either side of the meal break, absent factors rendering such scheduling impracticable."

### The Facts

The employer provided employees working an 8-hour shift with a combined 20-minute rest break that either preceded or followed a 30-minute meal break. The plaintiff claimed that "a single, combined rest period" violated California's IWC Wage Order No. 1, which applies to the manufacturing industry. The employer argued that its practice complied with the Wage Order because employees received the requisite total amount of rest time—namely, 20 minutes—and that employees preferred a 20-minute rest break, which increased productivity.

The trial court had granted summary judgment in favor of the employer, ruling that its practice of providing a combined 20-minute rest period before or after the meal break was lawful. The appellate court disagreed and reversed.

### The Appellate Court's Opinion

Wage Order 1 states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Relying on the California Supreme Court's decision in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4<sup>th</sup> 1004 (2012) (which dealt with identical language in Wage Order 5 applicable to the public housekeeping industry), the appellate court found that Wage Order 1 requires employers to provide a 10-minute rest break in the middle of work periods occurring before and after the 30-minute meal break "absent an adequate justification

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why such a schedule is not capable of being put into practice or is not feasible as a practical schedule.” The court concluded that “a departure from the preferred schedule” (*i.e.*, an exception to the rest break timing requirement) is permissible only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a **material burden** that would be imposed on the employer by implementing the preferred schedule.

In other words, in order to deviate from the rest break timing requirement, an employer must show facts demonstrating that the timing requirement would impose a material burden on the employer and show that the deviation or “departure” is necessary to alleviate such burden. A departure from the preferred schedule that is “merely advantageous” to the employer cannot satisfy the Wage Order’s rest break timing requirement.

### **Employer Take Away**

Because the IWC Wage Orders contain virtually identical language regarding the timing of rest breaks, with few exceptions, employers with a California workforce should review their rest break policies and practices in light of the new *Rodriguez* decision. Please contact your Hanson Bridgett attorney with any questions regarding rest breaks.

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