

A Good Deed Never Goes Unpunished When Applying California's Wage Order Rules on Scheduling Rest Breaks

By: [Madonna Herman](#) and [Joshua Mizrahi](#)

California courts continue to strictly enforce the State's meal and rest break laws. A recent case highlights the importance of adopting statutorily appropriate employee rest break procedures.

In *Rodriguez v. E.M.E., Inc.*, decided on April 22, 2016 by a California Court of Appeal in Los Angeles,¹ the panel considered whether combining the two 10-minute rest periods required by Wage Order 1-2001 is permitted. The defendant employer, E.M.E. was a family owned metal finishing company that was in business for over 50 years and provided steel processing services to the aerospace industry. As acknowledged by the court, for over 30 years, the company provided a combined 20-minute rest break for its 8-hour shift workers based on "an informal agreement between management and employees, who preferred a 20 minute rest break" and because "the combined break also increased productivity."

California's rest break law is somewhat byzantine. Wage Order 1-2001 requires that employers provide rest periods "insofar as practicable...in the middle of each work period...at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." The California Supreme Court provided some guidance on rest break timing in *Brinker Restaurant Corp. v. Superior Court*,² which held that "in the context of an eight-hour shift, '[a]s a general matter,' one rest break should fall on either side of the meal break."

Mr. Rodriguez, the complaining former employee, worked as a painter and a shift supervisor at the company for approximately 18 years. After he left the company, he filed a class action complaint in Los Angeles Superior Court seeking relief for violations of Wage Order No. 1-2001 based on the combined rest breaks.

The court held that, under *Brinker* and its interpretation of the language contained in Wage Order 1-2001, employers must provide employees working 8-hour shifts rest breaks in the middle of each 4-hour work period, preferably before and after the meal break, unless the employer can demonstrate that this schedule "would impose a material burden on the employer, and that the departure from the preferred schedule is necessary to

alleviate such burden" and "will not unduly affect employee welfare."

The court concluded that E.M.E. made an adequate showing to justify its departure from the "preferred schedule" because the practice saved time and money associated with the company's particular production activities and was not detrimental to the company's employees. However, the court determined that summary judgment was incorrectly granted in favor of the company because the employee raised a triable issue of fact as to whether departing from the "preferred schedule" would actually be detrimental to the company.

The case points out an expensive lesson. If an employer wants to provide a "combined" rest break to its employees instead of separate 10-minute rest breaks, the employer will have to show:

- (1) that combining the rest periods is not detrimental or harmful to its employees,
- (2) that providing breaks in separate 10-minute segments would impose a material burden on the company, and
- (3) that combining the rest break is necessary to relieve such burden.

The California Retailers Association and California Association of Health Facilities filed supporting briefs. The organizations maintained that Wage Order 1-2001 permitted combined rest breaks and argued that employers should be "obliged only to ensure that the meal and rest breaks, taken together, divide a work shift into approximately equal 'work period[s].'" Although the court agreed that the Wage Order did not bar combined rest breaks, it rejected the organizations' interpretation of the "preferred schedule," and noted that the only example of permissible combined breaks involved an employer whose business requirements necessitated that meal breaks occur soon after employees start their shifts—evidence that was not presented by E.M.E.

¹ Case No. B264138 [2016 Cal. App. LEXIS 315].

² *Brinker Restaurant Corp. v. Superior Court* (2010) 53 Cal.4th 1004.



In the event that your company combines any of the mandated breaks, you should consult with counsel to review the arrangement. Our attorneys have substantial experience in assisting clients to establish compliant meal and rest break policies and developing effective internal documentation processes when the need to deviate from the preferred schedule is necessary.



Madonna Herman Graham is Of Counsel in the firm's Labor & Employment practice group in San Francisco. She can be reached at 415.227.3515 or mherman@buchalter.com.



Joshua Mizrahi is a Shareholder in the firm's Labor & Employment practice group in Los Angeles. He can be reached at 213.891.5258 or jmizrahi@buchalter.com.