

Rest Breaks May Not Be Combined Except in Limited Circumstances

David Leporiere



My employees all work an 8-hour day. It's my understanding that when an employee works an 8-hour day, he or she is entitled to two 10-minute rest breaks and a 30-minute meal break. As a convenience to my staff that schedules employee breaks, I'm wondering if I can have my employees combine their two rest breaks into a single 20-minute rest break?

Unfortunately, as the employer, in most circumstances you cannot require your employees to combine their rest breaks. The California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (53 Cal.4th 1004 (2012)) ruled that “rest breaks in an eight-hour shift should fall on either side of the meal break.”

Combining Breaks

In a more recent California appellate court case, the court in *Rodriguez v. E.M.E. Inc.* expanded on the Brinker ruling and provided guidance on limited circumstances in which an employer might be able to combine rest breaks (2016; ___ Cal App 4th ___ (2016 WL 1613803 (2016))).

The court stated that an employer must meet two requirements in order to combine rest breaks:

- Scheduling the rest breaks at a time other than the middle of each 4-hour work period must not unduly affect employee welfare; and
- The employer must show that the altered schedule would alleviate a material burden that would otherwise fall on the company.

Opinion Letter

The court's conclusion was consistent with a September 17, 2001 Opinion Letter from the California Labor Commissioner, which stated that rest breaks must be taken in the middle of the two different work periods "absent truly unusual circumstances." As a result, employers do not have the right, as a matter of law, to require their employees to combine their rest breaks.

Before attempting to require your employees to combine their rest breaks, employers should consult legal counsel to determine if they can meet the requirements outlined in the *Rodriguez* case.