# *Labor and Employment Alert*: Washington Employers Face Increased Liability for Waived Meal Breaks

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Washington law requires that employees who work five consecutive hours receive a 30-minute meal break. Employees may choose to waive these meal breaks, and the Washington Department of Labor & Industries "recommends" – but does not require – that employers obtain a "written request" from an employee who does so. Recently, the Washington Supreme Court held that an employer bears the burden of proving that a meal break was actually provided or waived.

In *Brady v. Autozone Stores, Inc.*, the plaintiffs brought a class action in federal court claiming that they were prevented from taking meal breaks as required by Washington law. The district court denied class certification, holding that "employers have met their obligation under the law if they ensure that employees have the opportunity for a meaningful meal break, free from coercion or any other impediment." The plaintiffs disputed that this holding correctly stated Washington's meal break law, and the district court certified questions about the law's coverage and scope to the Washington Supreme Court.

The Supreme Court first explained that Washington law does not impose strict liability on employers when an employee misses a meal break because employees are permitted to waive their meal breaks.

The Court then explained that Washington law "imposes a mandatory obligation on the employer to provide meal breaks and to ensure those breaks comply" with the law. In so holding, the Court expressly rejected the California Supreme Court's analysis of California's meal break law in *Brinker Restaurant Corp. v. Superior Court*. Under *Brinker*, an employer's only obligation is to "provide a meal period to its employees" by offering them a "reasonable opportunity to take an uninterrupted 30-minute break," and not impede or discourage employees from doing so." The Washington Supreme Court rejected *Brinker* because Washington law "ultimately provides greater protection for workers."

Thus, under Washington law, an employee asserting a meal break violation can show a prima facie case by providing evidence that he or she did not receive a timely meal break. If the employee does so, then

to successfully defend against the claim, the employer must show either that no violation in fact occurred or that a valid waiver exists. According to the Court, “this should not be an onerous burden on the employer, who is already keeping track of the employee's time for payroll purposes.”

But as a practical matter, when an employer contends the employee waived the meal break, the employee would not have punched out and in. So there would be no record of the employee’s meal time. Without a written waiver, it will be difficult for the employer to establish that the employee actually chose to waive the meal period as opposed to not having been provided one. Contact your Vorys lawyer if you have questions about Washington’s wage-hour laws and best practices for compliance.