

Prospective Written Meal Period Waivers Survive, California Court Affirms Enforceability

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The California Court of Appeal recently issued a significant decision affirming that employers and employees may mutually agree, in writing, to prospectively waive the employee's meal period for shifts between five and six hours.

The ruling in *Bradsbery v. Vicar Operating, Inc.* confirms that such waivers are enforceable under California Labor Code section 512 and the relevant Industrial Welfare Commission (IWC) Wage Orders, provided certain conditions are met. *Bradsbery* provides much-needed guidance for employers regarding meal period waivers and offers a clear path for compliance.

Background

The case arose from a class action filed by former employees of a veterinary hospital network who alleged their employer failed to provide required meal periods for shifts between five and six hours. The employer defended the claims by pointing to signed written waivers it has obtained from employees that prospectively waived the right to a meal period on qualifying shifts and also allowed employees to revoke the waiver at any time.

The trial court granted summary adjudication in favor of the employer, finding the waivers valid. The employees appealed, arguing that prospective, written waivers are not authorized by law and that a new waiver must be obtained *each time* the employee wants to waive a meal period.

Key Legal Issues

Rejecting this impractical approach, the Court of Appeal ruled in favor of the employer, focusing on

the following key points:

- **Statutory and Regulatory Text:** The court found that neither Labor Code section 512 nor the applicable wage orders specify *when* a meal period waiver must be obtained or *what* form it must take (i.e., written or oral). The statutory language simply requires mutual consent.
- **Legislative and Administrative History:** The court's review of the legislative and administrative history revealed that both the legislature and the IWC did not intend to prohibit prospective written waivers. Indeed, the IWC has previously endorsed prospective written waivers in other contexts as a means of safeguarding employee choice and providing clarity for employers. Thus, the court saw no reason why a prospective written waiver for shifts of no more than six hours would be impermissible.
- **Employee Protections:** The court emphasized that the waivers at issue were revocable at any time and there was no evidence the employees were “coerced” or “tricked” into signing them. The court noted it would have “serious reservations” about the enforceability of waivers under circumstances involving coercion, lack of knowledge, or inability to revoke.
- **Distinguishing Precedent:** The court rejected arguments that prior case law (notably *Brinker Restaurant Corp. v. Superior Court*) prohibited prospective waivers, finding those authorities either inapplicable or not controlling.

Implications for Employers

This decision confirms that California employers may utilize prospective, written meal period waivers for employees working shifts between five and six hours, so long as the waivers are entered into voluntarily and can be revoked at any time. The ruling provides clarity on a previously unsettled issue and offers employers a practical mechanism to manage meal period compliance.

Best Practices for Employers

In light of this decision, employers should consider implementing the following best practices:

1. **Use Written, Standalone Waivers:** Implement clear, written waivers that are signed by employees and specify the right to revoke at any time.
2. **Ensure Voluntariness and Clarity:** Present waivers in a manner that is free from coercion with language that is easily understood by employees.
3. **Communicate Revocation Rights:** Clearly inform employees of their right to revoke the waiver at any time and the process for doing so.
4. **Avoid Retaliation:** Do not retaliate against employees who decline to sign or choose to revoke a waiver.
5. **Audit for Compliance:** Regularly review waiver forms and practices with legal counsel to ensure ongoing compliance with the Labor Code and applicable Wage Orders.

The *Bradsbery* decision provides clarity for California employers regarding the use of prospective, written meal period waivers for short shifts. Employers should review their current practices and consult with counsel to ensure their waiver policies align with this guidance.

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