



State of California
DIVISION OF LABOR STANDARDS ENFORCEMENT
MEMORANDUM

DATE: June 2008

**RE: Report of the Public Forums on Meal and Rest Breaks by State Labor
Commissioner Angela Bradstreet**

Following my appointment as Labor Commissioner by Governor Schwarzenegger in June 2007, I quickly became aware of widespread concerns from workers and employers regarding the status of California's meal and rest period laws. Many of these concerns have arisen from what seem to be confusing or conflicting regulatory and statutory enforcement requirements. With that in mind, I thought it would be helpful to hear from members of the public firsthand about how the current laws are affecting them. Accordingly, on August 2nd and August 9th I held two public forums in Sacramento and Los Angeles respectively.

Approximately 200 attended in Sacramento and over 400 attended over in Los Angeles. Additionally, over 2000 written submissions have been received. A summary of these submissions and a transcription of the live comments in so far as they were audible and could be transcribed, have been compiled and, concurrent with this report, have been posted on the DLSE website. The importance of meal and rest breaks to workers' health cannot be overstated. I listened to much testimony on the detrimental effects of fatigue and hunger. Additionally, employees and employers described the importance of breaks in maintaining optimum levels of productivity, accuracy and efficiency. The benefits of breaks to all workers in this State are real.

Numerous business owners testified that they support workers taking breaks. I do not believe that anyone testified that breaks should not be taken. Preserving the right to take meal and rest breaks is critical.

One theme that dominated the forums was the stated need and desire for flexibility in the start time of meal breaks. Many workers told me that they objected to being forced to commence their meal break by the end of the fifth hour. Restaurant workers told me that their tips from customers are highest at that time when business is at its peak and that they are therefore losing valuable income by being forced to stop work. Commissions are often lost when sales employees are forced to leave their customers to take a lunch break. Truckers and delivery drivers explained that it is often unsafe to pull off the road, yet their employers require them to do so if they are about to enter into the fifth hour of work. Security officers and others who protect the public discussed the increased dangers posed by a lack of flexibility from a safety and homeland security perspective.

Nurses, home care and hospital workers recounted how the lack of flexibility can jeopardize patient care. And, because of required staff – patient ratios in the case of hospitals and the sheer numbers of employees involved in the case of other mid and large sized businesses, staggered lunch breaks are being commenced at 9am or even earlier. Who wants to eat lunch at 9:00am?

At great economic cost, some businesses are giving workers an extra 30 minute break later in the day so that workers can eat their lunch when they are hungry. Others are shortening shifts to five hours or less, thereby avoiding a meal break completely.

There was also significant testimony and submissions in opposition to more flexibility. The prime reason expressed was a fear that this would erode the fundamental right to take a meal break.

Many advocated the use of collective bargaining agreements to establish meal and rest period arrangements. At this time the Court of Appeal's decision in *Beardon v. Borax* is binding. The decision holds that,

unless such collective bargaining agreements are expressly exempted in the statute, the requirements of 512 are controlling. The apparent dichotomy in the position of those who seek the flexibility to collectively bargain around 512, but object to other businesses also seeking the same flexibility, is difficult to reconcile; applying more flexibility to the start time of meal breaks in a comprehensive manner is justified for the reasons described.

I also heard extensive live comments and received briefing regarding the meaning of an employer's duty to provide meal breaks.

The Court of Appeals in the currently unpublished case of Brinker has recognized that whether an employer must ensure that employees actually take their meal breaks is a question of first impression in California. The question needs to be resolved and in October I sent a letter to the Brinker Court urging the court to decide the issue in citable precedent. The forums revealed that the lack of clarity is resulting in harm to workers. In this respect, numerous employers told me that they are disciplining and even firing workers for not taking a full thirty minute meal break. For example, UPS reported that in the first eight months of 2007 it issued 7,200 disciplinary citations and fired 22 workers for meal break violations. Many other businesses are following suit, with some employing a three strikes and you're out rule.

There was also considerable testimony describing the economic toll to businesses of "policing" meal breaks. In this regard it is common practice to employ supervisors whose sole duties are to monitor breaks and to discipline employees who chose not to take them.

It is apparent that emotions surrounding the issue of meal and rest periods have run high for a long time. Conflicts and confusion in the statute and in the IWC orders have proven problematic. The forums demonstrated an urgent need for common sense solutions by the Courts and by the Legislature which would greatly benefit workers and businesses throughout California.

I hope that the public forums and this report will serve as catalysts in helping towards solving some of the very real problems in this area, while ensuring that all eligible employees in this State have the unfettered right and opportunity to take meal breaks.