

Daily Journal

JULY 18, 2012

Top 75 Labor and Employment Attorneys



The *Daily Journal's* first special issue devoted to Labor & Employment was published three years ago with a cover that read: "Waiting for Brinker." That headline was an acknowledgement that the development of employment law had grown stagnant despite being a practice that consumes vast court time and resources. Even in California, the nation's hotbed for cutting edge (businesses might say edge cutting) employment litigation, the development of the law wasn't progressing.

2012 changed all of that.

In February, California's 1st District Court of Appeal issued a strongly worded opinion in *Duran v. U.S. Bank National Association* that gave crucial guidance on certification of class actions in wage and hour misclassification litigation. Two months later, on April 12, the California Supreme Court issued its long-awaited and seminal ruling in *Brinker v. Superior Court* that provided guidance on the issue of meal and rest breaks. On April 30, the California Supreme Court was at it again. This time, in *Kirby v. Immoos Fire Protection Inc.*, the justices said violations of meal and rest breaks do not provide a basis for statutory attorney fees to the prevailing party.

For the lawyers on the *Daily Journal's* list of top practitioners in California everything has changed and nothing has changed. Employment has been and will remain one of the busiest areas of the law – despite the recent rulings, most experts believe. What's different is the lawyers now have some new tools with which to work their craft.

— The Editors



COURTESY PHOTO

Malcolm A. Heinicke

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Specialty: litigation, counseling

Plaintiffs' lawyers once focused on the low-hanging fruit of labor and employment violations, but now they seem to be plying new turf, Heinicke said.

"Cashiers having seats behind them is one," he added.

In December, Heinicke secured the dismissal of a representative action against 99 Cents Only Stores, seeking penalties for failing to provide seats to cashiers. *Bright v. 99 Cents Only Stores*, BC 415527 (Los Angeles Super. Ct., filed Dec. 7, 2011).

Los Angeles County Superior Court Judge William Fahey agreed that the case couldn't proceed on a representative basis

because it would be unmanageable, Heinicke said, and also because the lead plaintiff's views differed from some of those she sought to represent.

Since the ruling, the plaintiff has dismissed her action with prejudice.

Heinicke's win was the first order denying class-representative status in a seating case, he said.

"As you see the evolution and expansion of wage-and-hour cases, it's really important for us representing employers not only to focus on the law but to explain why these policies exist and are beneficial for commerce, customers and employees themselves," Heinicke said.

With the uptick in labor and employment class litigation, there also has been more judicial and appellate guidance on these issues, he said.

"It's given us more concrete arguments of law, but still there are a lot of unanswered questions," he said. "Laws are going to continue to develop."

— Pat Broderick