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# california court of appeal upholds validity of prospective written meal period waivers

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*MSK Client Alert*

April 23, 2025

In a case handled by MSK partners Gary McLaughlin and Corey Singer, the California Court of Appeal issued a significant published decision on April 21, 2025 upholding the enforceability of prospective written meal waivers on qualifying shifts, affirming a summary adjudication ruling in favor of MSK client Vicar Operating, Inc. ("Vicar"). See *Bradsbery v. Vicar Operating, Inc.*

## **Background**

The plaintiffs, two former employees of Vicar, filed a putative class action alleging that Vicar failed to provide meal periods as required by Labor Code Section 512 and the wage orders (in this case, Wage Orders Nos. 4 and 5). Vicar moved for summary adjudication, relying on written waivers signed by plaintiffs that prospectively waived their right to a 30-minute meal period on shifts lasting six hours or less. It was undisputed that these waivers were voluntary and expressly revocable at any time. The trial court upheld the validity of these waivers, and the Court of Appeal affirmed.

## **Key Takeaways from the Court's Ruling**

- **Prospective Waivers Permitted:** Labor Code Section 512 and the wage orders allow employees to waive a meal period on shifts longer than five hours but no longer than six hours "by mutual consent of the employer and employee." The Court found that nothing in the statute or wage orders prohibits the use of revocable, prospective written waivers to effectuate that mutual consent. The Court rejected the plaintiffs' argument that waivers must be given on a shift-by-shift or schedule-by-schedule basis.
- **Prospective Waivers Are Consistent With Employee Welfare:** The Court conducted a comprehensive review of pertinent legislative and administrative history and concluded that prospective written waivers are

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consistent with employee welfare, and protect both employees and employers.

- **Enforcement May Depend On Unconscionability:** The Court noted that the plaintiffs did not argue that they unknowingly signed or were coerced into signing waivers, that they could not freely revoke the waivers at any time, or that the waivers were unconscionable. While explaining that this case did not present such issues, the Court expressed its reservations about the validity of a prospective written meal waiver under such hypothetical circumstances.