

---

# The San Diego Union-Tribune

## Court says employers can ask workers to waive meal periods in advance

The waiver must be freely agreed to by the employee, who can revoke it at any time.

By [Dan Eaton](#)

UPDATED: May 5, 2025 at 6:03 AM PDT

Nonexempt California employees (that is, employees eligible for overtime pay) generally are entitled to an unpaid 30-minute meal period for shifts longer than five hours. Under Labor Code section 512(a), the meal period “may be waived by mutual consent of both the employer and employee” for shifts lasting more than five hours but less than six hours. California Industrial Welfare Commission (IWC) [wage orders](#), which have the force of law, have almost identical language. The California Division of Labor Standards Enforcement has posted [guidance](#) about these and other meal period basics.

In *Bradsberry v. Vicar Operating, Inc.*, the California Court of Appeal addressed these previously unanswered questions: Does the phrase “waived by mutual consent of both the employer and employee” prohibit an advance written meal period waiver? Must an employer obtain an employee’s waiver for each shift only as it is worked or scheduled?

### Background

The case was brought by a proposed class of support staff who worked for Vicar, a network of veterinary hospitals.

The staffers signed this written meal period waiver:

*I hereby voluntarily waive my right to a meal break when my shift is 6 hours or less. I understand that I am entitled to take an unpaid 30-minute meal break within my first five hours of work; however, I am voluntarily waiving that meal break. I understand that I can revoke this waiver at any time by giving written revocation to my manager.*

The staffers contended this advance meal period waiver was invalid. They argued they could waive a meal period only after they worked, or were scheduled to work, each shift.

### Why court approved advance written waiver

The court of appeal found the language and history of section 512 and the IWC wage orders do not reflect an intent to prohibit an advance written waiver of meal periods. The court expressly declined to decide whether the law permits the advance oral waiver of meal periods.

The court observed that section 512 and the wage orders are silent about when the meal period may be waived for shifts between five and six hours. The court further observed that the rules expressly authorize prospective written waivers of off-duty meal periods even during work shifts

longer than eight hours where the nature of the work prevents an employee from being relieved of all duty. “If a prospective written waiver agreement is appropriate under such circumstances, it is reasonable to infer there was no intent to prohibit such agreements when a shift is between five and six hours, which implicates reduced health and welfare concerns compared to longer shifts.”

Significantly, the employees conceded they: (1) signed the meal periods knowingly; (2) were not coerced into signing the waivers by Vicar’s greater bargaining power; and (3) could freely revoke the waivers at any time. The court said it “would have serious reservations regarding the validity of prospective written waivers of meal periods” absent such facts.

### **Features of enforceable advance meal period waiver**

It is administratively simpler to have blanket meal period waivers in place than to obtain them for each shift as it is worked. A written advance meal period waiver should be:

- Signed and signed knowingly.
  - The waiver should be a separate document and clearly written in a language the employee understands.
  - The California Employers Association has posted a [form](#) advance meal period waiver that may be a useful resource.
  - Note the waiver is mutual and therefore must be signed by both the employee and by an authorized employer representative.
- Signed freely and without coercion of any kind.
  - The language of the advance meal period waiver should not impede or discourage workers from taking meal breaks.
  - Neither initial nor continuing employment should depend on signing the waiver.
- Expressly revocable by either the employee or the employer at any time.
  - The California Employers Association form has bold, boxed language just above the signature lines that says “this agreement shall be in full force and effect during the entire period of my employment” unless either the employee or employer revokes the waiver with one day’s written notice.

Because of the consequences of getting this wrong, an employer should adopt and administer advance meal period waivers only with the advice of experienced counsel.

**U-T Business:** Get ready for your week with the top business stories from San Diego, from technology to energy to real estate.

*Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at [eaton@scmv.com](mailto:eaton@scmv.com).*