

Daily Journal

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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

Marta M. Fernandez

Jeffer Mangels Butler & Mitchell
LLP

Los Angeles

Specialty: hospitality, health care

She led the litigation team in a wage-and-hour class action against client Hoag Memorial Hospital Presbyterian, successfully defeating a class-certification motion in May. *Corona v. Hoag Memorial Hospital Presbyterian*, 30-2009 00295587 (Orange County Sup. Ct., filed Aug. 21, 2009).

According to Fernandez, it's the first time such a certification against an acute care hospital has been denied in California.

Based on the pleading, damages were estimated by plaintiffs to exceed \$200 million. They ended up settling for \$4 million.

"The case came to us at a time when wage-and-hour class actions against health-care providers were booming," Fernandez said. "Classes were getting certified in this industry throughout California."

She said she was facing an uphill battle.

"We felt that we needed to handle the case

with a new spin, not in a cookie cutter way," she said. Rather than focus only on the issue of commonality — a requirement in certifying class actions — Fernandez said that she decided to integrate the merits into the argument, as well.

"By getting into the merits, we were able to distinguish why there wasn't a class here to be had," she added.

In another matter, Fernandez was lead chief labor negotiator for the Daughters of Charity Health System, which reached an agreement with SEIU-UHW on a new three-year contract covering nearly 2,600 employees in six DCHS hospitals in California.

"The biggest challenge and accomplishment was in the partnership with the union," she said.

The parties agreed to a shift from a traditional defined pension benefit plan to a defined contribution plan.

"It's difficult, in these times where there isn't an abundance of money, especially in the health-care arena, to be able to quickly negotiate a successful collective bargaining agreement with such a large group of employees."

— Pat Broderick

Hospitality and health care are two industries especially impacted by the ebbs and flows of the economy, and they also happen to be Fernandez' two main focuses.