

## California Fast-Food Industry Subject to New Regulations and Worker Wage Increase, by Kartikey A. Pradhan, Esq. and Shirley Luk, Esq., 4-1-2024

The fast-food industry in California faces new regulations under a new law that both increases the minimum wage for covered employees and also establishes the nation's first statewide Fast Food Council.

Effective April 1, AB 1228, which added sections 1474, 1475, and 1476 to the Labor Code, dictates that all covered non-exempt "fast food restaurant employees" must be paid at least \$20 an hour. Exempt managerial employees must earn at least two times the minimum wage. It is estimated this new law impacts more than 500,000 fast-food workers.

### Fast Food Council

The new law also creates a nine-person Fast Food Council, which is empowered both to make future increases to the minimum wage and to adopt other minimum employment standards for fast food restaurants, according to recent guidance from the State's Department of Industrial Relations (DIR). The hourly minimum wage established by the Council can increase every year by either 3.5% or the increase in the consumer price index, whichever is smaller. The Council and its authority sunset January 1, 2029.

The law applies only to employees of "fast food restaurants." According to DIR, to be considered a fast-food restaurant, the restaurant must meet all of the below criteria:

- The restaurant must be a "limited-service restaurant" in California. A limited-service restaurant is one that offers limited or no table service, where the customers order food or beverage items and pay for those items before the items are consumed.
- The restaurant is part of a restaurant chain of at least 60 establishments nationwide. An establishment is a single restaurant location offering food or beverages to customers. Off-site business locations (geographically separate from a restaurant location), at which employees perform administrative, warehouse, or preparatory food production tasks, are not counted as "establishments" toward the 60-establishment minimum.
- The restaurant is primarily engaged in selling food and beverages for immediate consumption.

### Exemptions

Certain restaurants operated in conjunction with larger enterprises will be exempt as a result of Governor Newsom signing AB 610 into law on March 25. These include those connected to airports, hotels, large event centers, theme parks, museums, gambling establishments, and corporate campuses. The idea being that these operations "are often operated subject to concession or food service contracts, and have different employment structures."

AB 1228 already provides carve-outs for bakeries (that produce on the establishment's premises bread for sale as a stand-alone menu item) and restaurants located and operated within grocery stores.

## Bakeries

Restaurants that operate a bakery that "produces" and sells "bread" as a stand-alone menu item as of September 15, 2023, and continue to do so are exempt from the new law. "Bread" is defined as a single unit item that weighs at least ½ pound after cooling and must be sold as a stand-alone item.

The following types of fast-food restaurants do not come under the exemption, according to the state:

- Restaurants that sell bread only as part of a sandwich or hamburger, but not as a stand-alone menu item;
- Restaurants that sell stand-alone items weighing less than one-half pound after cooling, such as most muffins, croissants, scones, rolls, or buns, but do not sell bread weighing at least one-half pound after cooling; and
- Restaurants that do not "produce" bread on the premises of the restaurant location where customers purchase the bread. Producing bread includes making the dough (typically, flour, water, and yeast) and baking it. Baking pre-made dough, i.e., dough that was mixed or prepared at another location, does not constitute "producing" bread at the establishment where the bread is sold.

## Grocery Establishments

Restaurants located within a "grocery establishment" are exempt from the new law.

A fast-food restaurant establishment is exempt from the new law if it meets both of the following, according to the state's guidance:

1. The restaurant establishment is located and operates within a "grocery establishment." The term "grocery establishment" is defined as a retail store in the state that is:

- over 15,000 square feet in size; and
- sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods";
- with any sale of other "household supplies or other products ... secondary to the primary purpose of food sales."

Primarily means that the establishment earns more than 50% of its gross income from the sale of household foodstuffs for offsite consumption.

2. The grocery establishment employer employs the individuals working in the restaurant.

The law has broad applications and could potentially capture establishments that may not traditionally be considered fast-food restaurants. There could be serious implications for non-compliance.

#### Kaufman Dolowich Can Help

If your restaurant or establishment needs assistance complying with the new law, Kaufman Dolowich's team of skilled labor and employment attorneys can help.