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CALIFORNIA'S FAST-FOOD INDUSTRY FACES DEVASTATING CONSEQUENCES AFTER LAWMAKERS PASS UNION-BACKED BILL

Insights
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California lawmakers just passed the first bill in the nation that aims to enact specific workplace rules and standards for fast-food employees – a move that could have devastating consequences for the industry. The Fast Food Accountability and Standards Recovery Act, also known as the FAST Recovery Act (or AB 257), will establish a 10-member Fast-Food Sector Council tasked with establishing standards on minimum wages, maximum working hours, training, and other working conditions applicable to industry workers. The bill – endorsed by the Service Employees International Union – is now headed to Governor Newsom's desk where there will be enormous pressure on him to sign it before the September 30 deadline. What are the potential consequences and challenges for the California restaurant industry should AB 257 become law? **[Ed. Note: Governor Newsom signed this bill into law on September 5, 2022.]**

Details on the Council

The most obvious impact of this bill, should it become law, is the formation of a 10-member Council that would be controlled by a combination of worker advocates and state representatives.

- Four of the seats would be reserved for industry representatives: two representatives of fast-food restaurant franchisors and two representatives of fast-food restaurant franchisees.
- Another four would be reserved for worker advocates: two representatives of fast-food restaurant employees and

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two representatives of advocates for fast-food restaurant employees.

- The final two members would be comprised of one representative from the Department of Industrial Relations and one representative from the Governor's Office of Business and Economic Development – no doubt members who would be more sympathetic to labor than businesses.

All members of the Council would be appointed by government officials with the chairperson of the Council appointed by the Governor.

What Would the Council Do?

The Council would convene public hearings every six months to hear public comment on issues of fast-food restaurant health, safety, and employment conditions. It would also hold sessions every three years to review and establish minimum standards concerning pay and working conditions like safety and training. From these meetings, the Council would form recommendations.

These recommendations would be sent to the California Legislature and **would automatically become effective** as new state regulation unless lawmakers specifically enact legislation preventing them from taking effect. If the Legislature does nothing with respect to a specific proposal, it would go into effect the following October 15.

A New Avenue to Sue

AB 257 would also provide employees with yet another avenue to sue employers. It specifically authorizes fast-food restaurant workers to bring causes of action for discharge, discrimination, or retaliation for exercising rights established by the FAST Recovery Act.

Employers would face an uphill battle in defending against these claims. The bill would create a rebuttable presumption of unlawful discrimination or retaliation for any adverse action taken against the worker within 90 days of a restaurant operator acquiring knowledge of the worker exercising their rights.

Local Councils Will Also Spring Up

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The bill would permit cities or counties with populations greater than 200,000 to establish a local council authorized to provide recommendations to the state council and would propose requirements for the state council in connection with these recommendations. There are over 20 such cities and nearly 30 such counties in California, so you can expect numerous smaller councils to spring up across the state.

Which California Restaurants Would Be Exempt From AB 257 Action?

The bill's requirements and the impact of Council policies would only apply to fast-food establishments consisting of 100 or more locations nationally that:

- share a common brand or that are characterized by standardized options for decor, marketing, packaging, products, and services; and
- provide food or beverage for immediate consumption on or off premises to customers who order and pay for food before eating, with items prepared in advance or with items prepared or heated quickly, and with limited or no table service.

What Are the Possible Consequences of AB 257?

There are three troubling consequences we expect to see as a result of AB 257 if it becomes law.

Increased Minimum Wage and Safety Standards for Fast Food Workers

AB 257 permits the Council to set the minimum standards for minimum wages, maximum hours of work, and other working conditions for fast-food restaurant employees, and would require that these standards be enforced by the California DLSE. Moreover, AB 257 permits the Council to increase minimum wage for fast-food workers above the state minimum wage. The only limit would be that the minimum wage cannot rise above $22 an hour in 2023 (which is nearly $7 more than the state minimum wage in 2023). After being raised, it would thereafter increase at a rate of 3.5% or rate of change in the Consumer Price Index into perpetuity.

Increased Costs to Customers

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The minimum standards imposed on the restaurant industry will inevitably increase operational costs. AB 257 does not dictate how restaurants are to adapt to those increases. Therefore, restaurants may have no choice but to pass those price increases on to customers, on the heels of similar moves driven by the COVID-19 pandemic. As a result, employers run the risk of decreasing demand, especially in low-income areas.

Job Loss Due to Use of Technology

Proponents of AB 257 fail to consider its potential for negative consequences on fast-food employees themselves. To offset the cost increases, employers are likely to turn to technological efficiencies and innovations, such as automated drive-thru ordering, self-order kiosks, and automated fryers and other kitchen equipment. The very employees AB 257 seeks to protect are at risk of losing their jobs if AB 257 becomes the law.

What's Next?

The bill now heads to the governor's desk. He has until September 30 to sign or veto the measure. If he signs it, as expected, it will become law in 2023 and you can expect the Council to be formed and begin its work next year.

We expect to see legal challenges to the law filed by industry advocates if the governor does sign the bill into effect. It is difficult to determine whether such a maneuver could temporarily block the law from taking effect or derail it altogether, but we will monitor developments and provide updates accordingly.

How Should you Prepare?

Given the far-reaching impact of AB 257 should it be signed into law, it will be vitally important to ensure that all of your ducks are in a row with respect to your labor and employment practices. Accordingly, we recommend an immediate review of your employment handbooks, training, timekeeping, and scheduling policies to ensure they are all 100% up to date and compliant with current California law. You would do well to conduct a full-scale labor and employment audit of your business practices in conjunction with your Fisher Phillips counsel.

Conclusion

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We will continue to monitor these developments, so make sure you are subscribed to Fisher Phillips' Insight system to keep up with the most up-to-date information. Please contact your Fisher Phillips attorney, the authors of this Insight, any attorney in our Hospitality Practice Group, or any attorney in our California offices should you have any questions.

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