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## CALIFORNIA LEGISLATURE PREPARED TO ENACT \$20 FAST FOOD MINIMUM WAGE TO AVOID SHOWDOWN

Insights  
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A deal between labor and business groups has just been struck that would remove a controversial referendum from the ballot, but will instead enact a \$20 minimum wage for the California fast food industry. Employers will likely now face a “revised” Fast Food Council that has far less punch than originally feared – but the compromise language inserted into AB 1228 – which still needs to pass the legislature and be signed by the Governor – will come at a cost. It appears this deal is going to happen – so what do employers need to know? And what should you do to prepare? **[Editor’s Note: Governor Newsom signed this bill on September 28.]**

### **Gone Before We Knew It: The End of the Fast Food Accountability and Standards Recovery Act**

The Fast Food Accountability and Standards Recovery Act, also known as the FAST Recovery Act (or AB 257) was the first bill in the nation aimed to enact specific workplace rules and standards for fast-food employees. This move was met with widespread concern about potential devastating consequences for the industry.

The law would have established 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. [You can read all about it here.](#)

### **Blockade Leads to a Summer of Negotiation**

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However, before the law could go into effect or be implemented, industry groups gathered sufficient signatures to put a referendum on the ballot in 2024 to ask voters whether they wanted to implement such a measure. That move put AB 257 on hold until the voters had a chance to weigh in and decide if the law should move forward or not.

This summer, there were widespread media reports of behind-closed-doors negotiations between Governor Gavin Newsom, the fast food industry, and organized labor to see if a legislative compromise could be reached to avoid the upcoming ballot battle. The tension was heightened by another pending bill this year (AB 1228) that would have made fast food franchisors jointly liable for labor violations committed by their franchisees.

At one point, the legislature and the governor even toyed with [bringing back the Industrial Welfare Commission to do the work of the Fast Food Council](#). They even allocated some budget funding to bring back the long-dormant IWC.

All of that back-room negotiating appears to have paid off. The media today announced that a “deal” had been put together by the parties to withdraw the referendum and replace it with new legislative language (inserted into AB 1228) to establish a modified Fast Food Council – in exchange for a new \$20 minimum wage for the fast food industry. Moreover, the announced compromise also rescinded the prior funding for the IWC.

## What Would Compromise Law Do?

The [new “deal”](#) is contingent on the referendum being withdrawn from the ballot. Assuming that happens (which it appears it will), AB 1288 would establish a new Fast Food Council largely with the same format and largely charged with the same tasks – developing wage and work standards for the fast food industry in California.

One major difference is that the Fast Food Council would send any proposed changes to the Labor Commissioner, Cal/OSHA, or the California Civil Rights Department for enactment of any standards developed by the council. By contrast, AB 257 would have charged the council with developing rules directly that would have gone into effect automatically unless the legislature stepped in to stop them. The new version of the council will instead send their rules to be implemented by rulemaking by the respective state

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agencies. The council would be required to convene its first meeting by March 15, 2024.

Notably, AB 1228 does not establish joint liability for franchisors and franchisees – apparently part of the legislative compromise – in another win for employers.

AB 1228 also has a “sunset date” – meaning it would expire in 2029 unless future legislation is enacted to extend it.

### **Who Is Impacted?**

The target of this legislation is still the fast food industry. However, AB 1228 includes a slightly different definition.

The legislation defines “**fast food restaurant**” to mean a limited-service restaurant in the state that is part of a **national fast food chain**. A “**national fast food chain**” means a set of limited-service restaurants consisting of more than **60** establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services, and which are primarily engaged in providing food and beverages for immediate consumption on or off premises where patrons generally order or select items and pay before consuming, with limited or no table service.

By contrast, AB 257 applied to fast food chains of more than 100 establishments.

### **Statutory Minimum Wage Increase**

The compromise legislation would establish a statewide minimum wage for covered employees of \$20 per hour effective April 1, 2024. Thereafter, the Fast Food Council would be authorized (but not required) to increase the minimum wage annually beginning January 1, 2025.

The legislation specifies that any annual minimum wage increases shall be no more than the lesser of (rounded to the nearest ten cents):

- 3.5%; or
- the annual rate of inflation reflected in the Consumer Price Index.

The council is also authorized to establish regional minimum wages that would apply to fast food employees.

As an apparent compromise, AB 1228 would prohibit local jurisdictions from enacting or enforcing a local minimum wage that applies to fast food employees (although local governments can still pass higher minimum wages that apply to all industries).

### **What Else Can or Can't the Fast Food Council Do?**

Like last year's bill, AB 1228's broad language gives the Fast Food Council the authority to develop standards on wages, working conditions and training. And the Council is required to conduct a review of standards at least once every three years. As discussed above, any standards would have to go through rulemaking by the Labor Commissioner or other respective state agency.

However, AB 1228 does specify a few areas in which the council is **not** authorized to act. First, the law says the council cannot create new paid time off benefits, such as paid sick leave or paid vacation. In addition, the council cannot create rules regarding predictable scheduling.

### **Enforcement**

AB 1228 provides that minimum wage violations would be enforced by the Labor Commissioner or via civil actions (employee lawsuits). The bill specifies that compliance with the minimum fast food restaurant employment standards shall be enforced by the Labor Commissioner or other state agencies where appropriate (such as Cal/OSHA or CRD).

### **What Should You Do?**

While [California employers are already getting ready for a higher minimum wage](#) starting January 1, 2024, those restaurants covered by AB1228 should begin to prepare their labor budgets for an increase to a \$20 per hour minimum wage beginning in April 2024.

Covered employers should also consider the impact a higher minimum wage will have on the minimum salary for exempt employees within their organization. That's because as the minimum wage increases for covered employers so does the salaries of exempt employees in order to meet the exempt employee criteria and keep salaries higher than non-exempt employees.

Covered employers will also want to review their operations to explore if there are any efficiencies that can be gained

without raising customer pricing. Absent additional efficiencies, covered employers will need to begin considering how menu prices may be impacted as a result of the higher costs of operation.

Finally, covered employers should review all of their wage and hour practices. A higher minimum wage, results in higher meal & rest period premiums, higher reporting time pay, higher split shift premiums, and higher waiting time penalties. Employer's policies and practices should be reviewed with these derivative impacts in mind.

## **Conclusion**

We'll monitor developments and keep you posted regarding anything you need to know as the situation evolves. For now, we advise employers to stay tuned and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in any one of [our six California offices](#).