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Labor & Employment Alert

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California's AB 257 greenlights civilian law-making council for large fast food employers and franchised brands

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The 10-person council will create employment laws governing minimum wages and other working conditions for employees of large fast-food chains.



What's the Impact?

- / The regulation(s) passed by the Council—which require a minimum of six (6) votes—will automatically become law unless the California Legislature convenes a vote to invalidate the Council's regulation(s)
- / AB 257 authorizes the Council to raise the minimum wage for fast food workers to \$22 per hour in 2023, and provides for annual increases thereafter
- / Employer and franchise industry representatives will constitute only four (4) of the ten (10) members of the Council

On September 5, 2022, Governor Gavin Newsom signed [AB 257](#), which creates Labor Code Section 1470—a law that creates a council of ten (10) civilian appointees (the “Council”), and gives

that Council the authority to create new employment laws for large fast food employers (i.e., those with 100+ locations nationwide).

The Council's objectives, composition, and scope

The Council is empowered to make laws concerning "working conditions" for employees of large fast food chains. "Working conditions" include, but are not limited to, wages, conditions affecting fast food restaurant employees' health and safety, security in the workplace, the right to take time off work for protected purposes, and the right to be free from discrimination and harassment in the workplace.

In addition to applying to corporate restaurant chains with presumably deeper pockets, the law was also drafted to include independent restaurant owners if they are part of a franchised brand. The law will apply to "any set of restaurants consisting of 100 or more establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services." This means that mom-and-pop franchise owners of a single franchised outlet within a franchised restaurant chain will be subject to the same standards regarding minimum wages and working conditions that are being imposed on employers that own 100+ restaurants.

The Council will be composed of representatives from various interest groups, including:

- / Two (2) representatives of fast-food employees;
- / Two (2) representatives of advocates for fast-food employees;
- / Two (2) representatives of fast-food franchisors;
- / Two (2) representatives of fast-food franchisees;
- / One (1) representative from the Department of Industrial Relations ("DIR"); and
- / One (1) representative from the Governor's Office of Business and Economic Development ("GO-Biz").

This composition means that California fast food employers will have four (4) votes collectively, fast food employees and their representatives will have four (4) votes collectively, and the government agency representatives will have two (2) votes collectively. To pass a law, the Council needs six (6) votes in favor.

The Council will have the power to raise the minimum wage for fast food employees to \$22.00 per hour in 2023, and may increase the minimum wage each year by the lesser of:

- / 3.5% every year; or
- / the annual increase in the Consumer Price Index.

AB 257 also authorizes a county or a city with a population greater than 200,000 to establish their own Local Fast Food Council to provide recommendations to the Council.

Addressing the Bill's ambiguities

The law does not define what it means to be a member of a particular interest group. For example, there is no requirement that a franchisor-representative have a certain number of franchises in California, or that an employee-representative work for a fast food company with a certain number of franchises in California. This means that appointment decisions are essentially up to California elected officials—specifically the governor (8/10 appointees), the speaker of the California Assembly (1/10), and the California Senate Rules Committee (1/10).

The law currently exempts from the definition of “fast food restaurants” the following businesses:

- / Bakeries who sell bread (as defined by federal law) as a stand-alone item on-site, but not establishments that sell bread only as part of another menu item.
- / Restaurants located inside a “grocery establishment” (i.e., a retail store over 15,000 square feet in size that primarily sells household foodstuffs for offsite consumption) whose employees are employed by the grocery establishment.

How can California fast food employers prepare now?

California fast food employers will have to begin complying with the Council's laws by October 15, 2023, unless the California Legislature votes to prevent those laws from going into effect. Covered employers, including franchisees of larger restaurant brands, should begin preparations to react to the laws the Council will pass, which may create new obligations in addition to increasing the cost of labor. Franchisors need to consider whether additional or modified disclosures are relevant for California franchisees, who will be at a disadvantage relative to their non-franchised counterparts.

There is also a possibility that AB 257 will be repealed by referendum in November, but it is too early to tell whether supporters of the referendum will obtain sufficient signatures to get the referendum in front of California voters on Election Day.

If AB 257 is not repealed, the Council's decisions could have immediate and far-reaching impact on California's fast food industry, and to the operations of franchised brands operating in the state. Accordingly, California fast food restaurant employers and franchisors should seek the advice and counsel of experienced counsel like Nixon Peabody, which has extensive experience in wage and hour litigation, union negotiations, franchise system changes, and proactive compliance strategies for new laws and regulations.

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