
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 257 (Holden) - Food facilities and employment

Version: June 16, 2022

Urgency: No

Hearing Date: August 1, 2022

Policy Vote: L., P.E. & R. 3 - 2, JUD. 7 - 1

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: AB 257 would enact the Fast Food Accountability and Standards Recovery Act, as specified.

Fiscal Impact:

- Staff estimates that this bill would result in special funds costs in the millions of dollars, likely reaching the tens of millions of dollars, on an annual basis across multiple units within the Department of Industrial Relations (DIR, see Staff Comments).
- Additionally, this bill could result in cost pressures to the courts. Specifically, the bill would authorize a cause of action for any employee of a fast food restaurant who is discharged, discriminated or retaliated against for exercising rights established by the bill. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for courts to perform existing duties.

Background: Under current law, California employers have a legal obligation to (1) provide and maintain a safe and healthful workplace for their employees, and (2) abide by minimum wage and labor standards required under the Labor Code. In spite of these protections, wage theft and labor law violations continue to be prevalent for many workers. According to a recent DIR Labor Enforcement Task Force (LETf) report to the Legislature, over the last couple of years, nine out of ten businesses inspected were found to be out of compliance by at least one LETf partner agency. In addition, LETf assessed over \$8.3 million in wages due to workers.

Enforcement of existing employment laws and regulations are handled by DIR's Division of Labor Standards Enforcement (DLSE) and its Division of Occupational Safety and Health (CalOSHA). Both of these divisions are given the authority to issue policies and interpretations of labor statutes as part of their enforcement responsibilities. CalOSHA proposes standards for adoption by the Occupational Safety and Health Standards Board (OSHSB), which provides guidance for employers on how to comply with labor law and ensure workplace safety for their employees. Similarly, the Legislature has empowered the DLSE to promulgate necessary "regulations and rules of practice and procedure," and as such, issues guidance to employers through opinion letters and the DLSE Enforcement Policies and Interpretations Manual.

The business model of a franchise consists of one where one business owner ("franchisor") sells the rights to their business logo, name, and model to an independent

entrepreneur (“franchisee”). Restaurants, hotels, and service-oriented businesses are often franchised. Two common forms of franchising are:

- *Product/trade name franchising*: The franchisor owns the right to the name or trademark of a business, and sells the right to use that name and trademark to a franchisee. This style of franchising normally focuses on supply chain management. Typically, products are manufactured or supplied by the franchisor and delivered to the franchisee to sell.
- *Business format franchising*: The franchisor and franchisee have an ongoing relationship. This style of franchising normally focuses on full-spectrum business management. Typically, the franchisor offers services like site selection, training, product supply, marketing plans, and even help getting funding.

Thus, franchising grants entrepreneurs the right to use the name, logo, and products of a larger brand benefiting from brand recognition, promotions, and marketing. However, it also means the entrepreneur will have to follow brand rules about how to run their business and these vary and are determined by the contract to which the parties enter with the franchisor.

Proposed Law: This bill would, among other things, do the following:

- Enact the Fast Food Accountability and Standards Recovery Act, or FAST Recovery Act.
- Establish the Fast Food Sector Council (Council) within the Department of Industrial Relations, to be composed of 13 members to be appointed by the Governor, the Speaker of the Assembly, and the Senate Rules Committee, and would prescribe its powers. The purpose of the council would be to establish sectorwide minimum standards on wages, working hours, and other working conditions related to the health, safety, and welfare of, and supplying the necessary cost of proper living to, fast food restaurant workers, as well as effecting interagency coordination and prompt agency responses in this regard.
- Define the characteristics of a fast food restaurant, including that the establishment be part of a set of fast food restaurants consisting of 30 or more establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services.
- Require the Council to promulgate minimum fast food restaurant employment standards, including standards on wages, working conditions, and training, and to issue, amend, and repeal any other rules and regulations, as necessary to carry out its duties, subject to affirmative vote by the Secretary of Labor and Workforce Development. Under the bill, if a conflict exists between council’s standards, rules, or regulations and those issued by another state agency, the standards, rules, or regulations issued by the Council would apply to fast food restaurant workers and fast food restaurant franchisees and franchisors, and the conflicting rules or regulations of the other state agency would not have force or effect with respect to these parties. The bill would except from this application

proposed standards within the jurisdiction of the Occupational Safety and Health Standards Board and would prescribe an alternate process in this regard.

- Require the Council to submit a report to the Legislature, as specified, for a standard, or repeal or amendment of a standard, to become effective, and would specify that a standard, repeal, or amendment shall not take effect before October 15 of the same year.
- Require the Council to provide information as requested by the Legislature to facilitate a review of the council's performance and standards, as specified.
- Require the Council to conduct a full review of the adequacy of minimum fast food restaurant health, safety, and employment standards at least once every 3 years. Require the Council, following that review, to issue, amend, or repeal, or make recommendations to issue, amend, or repeal, any fast food employment, health or safety standard as appropriate.
- Require the Council to hold hearings no less than every 6 months that would be open to the public, as specified, and would authorize the council to coordinate with and authorize local agencies to hold such meetings.
- Authorize a county, or a city with a population greater than 200,000, to establish a Local Fast Food Sector Council, and would prescribe its powers and requirements for its composition. Authorize a Local Fast Food Sector Council to provide recommendations to the Council and would prescribe requirements for the state council in connections with these recommendations.
- Require standards for minimum wages, maximum hours of work, and other working conditions fixed by the council to be the minimum standards for fast food restaurant-employees, absent a valid collective bargaining agreement, and require that they be enforced by DLSE. The bill would require the Labor Commissioner to take assignments of violations of standards issued by the council upon the filing of a claim in writing by an employee or an employee's authorized representative.
- Require that fast food restaurant franchisors be responsible for ensuring that its franchisees comply with a variety of employment, worker, and public health and safety laws and orders, including those related to unfair business practices, employment discrimination, the California Retail Food Code, a range of labor regulations, emergency orders, and standards established by the Council.
- Require that a fast food restaurant franchisor be jointly and severally liable for violations of its franchisee, as specified, and would provide that specified laws may be enforced against a fast food restaurant franchisor to the same extent that they may be enforced against a franchisee.
- Authorize a fast food restaurant franchisee to file an action against its franchisor for monetary or injunctive relief in connection with the terms of a franchise and the franchisee's compliance with specified laws and orders. Create presumptions

in this regard and would provide for joint and several liability of the franchisor if the terms of a franchise are found to be a substantial factor in causing the franchisee to be liable.

- Prohibit a fast food restaurant operator from discharging or in any manner discriminating or retaliating against any fast food restaurant employee for specified reasons and would create a cause of action and right to reinstatement for employees in this connection, as well as a presumption of unlawful discrimination and retaliation in certain circumstances.

Staff Comments: As noted previously, staff estimates that this bill would result in administrative costs to several divisions across DIR, likely reaching the tens of millions of dollars annually. Major cost drivers would include (1) staffing the Council, including an executive director, analytical, and support staff, (2) hearings held by the Council, including preparation time, and potentially, travel expenses, (3) rulemaking activity, including workload performed by research and legal staff, (4) completing a review of the minimum fast-food restaurant health, safety, and employment standards, as specified, (5) analyzing recommendations from the Local Fast Food Sector Council, (6) increased CalOHSAs enforcement, (7) increased DLSE retaliation workload based on the specified rebuttable presumption of unlawful discrimination, (8) producing the required annual report for the Legislature, and (9) increased legal and research workload across multiple units of the Department.

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