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California's FAST Recovery Act Establishes a Council With Broad Authority to Set Standards for Fast Food Workers

On September 5, 2022, California Governor Gavin Newsom signed the Fast Food Accountability and Standards Recovery Act (FAST Recovery Act or A.B. 257). The FAST Recovery Act creates the Fast Food Council, responsible for establishing minimum standards for employees in the fast-food industry, including establishing minimum wages, working hours, and other working conditions related to health and safety in the fast-food industry. The FAST Recovery Act will take effect on January 1, 2023, and will become inoperative on January 1, 2029.

Many of the key provisions of the FAST Recovery Act are likely to be the subject of future litigation and have the potential to create significant financial consequences for covered employers, such as a higher minimum wage.

The Council

The FAST Recovery Act establishes a 10-member council to consist of one member from the Department of Industrial Relations (DIR), two representatives of fast-food restaurant franchisors, two representatives of fast-food restaurant franchisees, two representatives of fast-food restaurant employees, two representatives of advocates for fast-food restaurant employees, and one representative from the Governor's Office of Business and Economic Development (GO-Biz). The speaker of the assembly and the California Senate Rules Committee will each appoint one representative as an advocate for fast-food restaurant employees. The governor will appoint the other representatives on the council. Representatives will serve four-year terms or until January 1, 2029. Additionally, counties or cities with a population of more than 200,000 may establish a local fast-food council to provide recommendations to the council.

The council has jurisdiction over fast-food restaurants, defined as any establishment that is part of a brand or fast-food chain with more than 100 locations and primarily provides food and beverages for immediate consumption to customers who order or select items and pay before eating, with items prepared in advance or prepared or heated quickly, and with limited or no table service.

Key Provisions

- Council decisions must be made by an affirmative vote from at least six of the council members, and council meetings must be held no less than every six months. All meetings must be open to the public and the council is required to review the minimum standards at least once every three years.
- If there is a conflict between standards issued by the council and another state agency, the standards issued by the council apply to fast-food workers covered by the FAST Recovery Act.
- The council is not authorized to promulgate standards that fall within the jurisdiction of California's Occupational Safety and Health Standards Board (OSHSB). Instead, if a council standard conflicts with that set by the OSHSB, the council may petition the board to adopt, amend, or repeal the standard.
- The council has the authority to raise the minimum wage for fast-food workers up to \$22 per hour in 2023, with subsequent years subject to inflationary increases.
- The FAST Recovery Act prohibits employers from discriminating or retaliating against employees for participating in proceedings relating to employee public health or safety, including any local fast-food council proceeding. There is a rebuttable presumption of unlawful discrimination or retaliation if the

adverse action takes place within 90 days following the employee's protected activity. The Fast Recovery Act provides employees with a private right of action to enforce this provision and entitles the employee to reinstatement, treble lost wages and benefits, and attorneys' fees.

- The standards implemented by the council may not supersede those addressed in a valid collective bargaining agreement.

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