

**Alert | Restaurant Industry/Labor & Employment/  
Franchise & Distribution**



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## California's 'FAST Recovery Act': The Anticipated Impact on the Restaurant Industry, Franchise Industry, Jobs and Food Prices

**This GT Alert covers the following:**

- Who the Fast Food Accountability and Standards Recovery Act Impacts: Many More than Its Title Suggests
- Establishment and authority of a "Fast Food Sector Council"
- The FFS Council Purpose and Scope of Authority
- Local Fast Food Sector Councils
- Implications for Franchisors, Franchisees, Non-Franchised Restaurants, and Others

### Overview

On Jan. 31, 2022, the California State Assembly passed [AB 257](#), the Fast Food Accountability and Standards Recovery Act, also known as the "FAST Recovery Act." The bill recently passed the State Assembly and awaits committee referral in the State Senate. If passed by the Legislature and signed by California Gov. Gavin Newsom, the FAST Recovery Act would dramatically change how the majority of California restaurants are regulated in multiple critical ways. The Fast Recovery Act would also

fundamentally change the relationship between many restaurant franchisors and franchisees, and make franchisors jointly and severally liable for any employment-related violations committed by their franchisees.

### **Who the FAST Recovery Act Impacts: Many More than Its Title Suggests**

While “Fast Food” is in the name of the bill, the legislation is far broader than its title suggests. It covers any restaurant concept with “30 or more establishments nationally that share a common brand” if it has the following four characteristics: 1) in its regular course of business provides food or beverages in disposable containers; 2) food is served for immediate consumption on or off premises; 3) operates with limited or no table service; and 4) customers pay before eating. For purposes of this GT Alert, concepts that meet the aforementioned criteria are collectively referred to as “Covered Restaurants.”

Covered Restaurants include those chains commonly associated with “fast food” but might also include fast casual and other brands not necessarily perceived as “fast food” given the bill’s broad definition of “fast food chain.” Also, Covered Restaurants include both company-owned and franchised restaurant concepts, not just franchised brands.

Brands solely or primarily company-owned and operated are also Covered Restaurants. In addition, Covered Restaurants include a growing number of casual dining brands that utilize counter service or digital ordering (without waitstaff at the table). The applicability of the FAST Recovery Act to non-franchised restaurants has been given scarce attention by lawmakers and those covering the legislation.

The FAST Recovery Act applies to concepts with 30 or more locations nationally. For example, a restaurant group that has 30 locations across the United States and only one location in California would be subject to the Fast Recovery Act in connection with the operation of its California-based restaurant(s).

Although the FAST Recovery Act is premised upon remedying historical and current labor issues involving employees of large franchised fast food restaurants, the Act goes far beyond that stated purpose, impacting myriad other businesses, including many known for progressive and employee-friendly policies. The FAST Recovery Act also fails to recognize that California restaurant employee pay and benefits are at all-time highs, as the COVID-19-related labor shortages have spurred significant compensation increase in restaurants across the state.

### **The Establishment of a “Fast Food Sector Council”**

The FAST Recovery Act establishes a “Fast Food Sector Council” (FFS Council), which is granted broad authority to regulate employment standards applicable to the Covered Restaurants.

The FFS Council’s purpose is to establish minimum standards on wages, maximum hours of work, and other working conditions for workers at the Covered Restaurants. The Labor Commissioner and the Division of Labor Standards Enforcement will be responsible for enforcing these standards.

The FFS Council is comprised of 11 members as follows:

- two workers from Covered Restaurants (one appointed by the Senate Rules Committee, one appointed by the Speaker of the Assembly)
- two representatives of a union or other labor advocacy group (one appointed by the Senate Rules Committee, one appointed by the Speaker of the Assembly)

- five representatives from various state regulatory agencies (appointed by the governor)
- one individual representing Covered Restaurant franchisors (appointed by the speaker of the Assembly)
- one individual representing Covered Restaurant franchisees (appointed by the Senate Rules Committee)

Notably, the text of the FAST Recovery Act only includes Covered Restaurant representation from a franchisor and franchisee and no representation from non-franchised restaurants. As such, restaurants that are company-owned and operated and not franchised, which is a significant number of restaurants in California, will have no representation on the FFS.

### **The FFS Council Purpose and Scope of Authority**

The FAST Recovery Act vests the FFS Council with broad authority to establish standards governing employment in the Covered Restaurants. The FFS Council is required 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.”

The FFS Council is also required to conduct a “full review” of the adequacy of minimum Covered Restaurant health, safety, and employment standards at least once every three years.

Only six FFS Council members must affirmatively vote to promulgate a standard, rule or regulation, meaning no approval of any representative from a Covered Restaurant is required for passage.

Proposed standards, rules, or regulations are set out in an FFS-Council-prepared report the FFS Council sends to specified legislative committees for consideration. A rule or regulation proposed by the FFS Council “shall not take effect until at least 60 days during which the Legislature is in session have passed” since the Legislature received the report. The Legislature may ask questions, hold hearings, or possibly even introduce legislation to override or amend a particular standard within that 60-day period. Notably, if the Legislature does not act within those 60 days (a likely scenario), then the proposed standard, rule, or regulation is automatically effective.

If the FFS Council recommends a standard, rule or regulation that falls within the jurisdiction of the Division of Occupational Safety and Health Board (OSHA), then the FFS Council is required to recommend it to OSHA’s Standards Board (the Board). The Board is required to review the proposal within three months and adopt the proposal unless it finds the proposal is outside the statutory authority of the Board or is otherwise unlawful. This gives the Board little room to deny standards, rules or regulations recommended by the FFS Council.

From a practical perspective, it is difficult to understand how rules promulgated by the FFS Council would, in practice, only apply to Covered Restaurants. It is anticipated that FAST-Recovery-Act-related standards, rules, or regulations would be applied to other businesses generally in California.

### **Local Fast Food Sector Councils**

The FAST Recovery Act also authorizes counties and cities with a population of greater than 200,000 to establish a Local Fast Food Sector Council. These local councils would be empowered to provide recommendations to the FFS Council so long as they are more favorable to employees than current employment conditions at the state or local level.

## Implications for Franchisors, Franchisees, Non-Franchised Restaurants, and Others

The FAST Recovery Act creates additional bureaucracy that may have a material impact on the California restaurant industry, the franchise industry, other industries, and workers. As currently drafted, the bill, in effect, transfers lawmaking authority to an unelected committee comprised primarily of pro-labor representatives and government regulators, with little business representation from the franchise community and no representation from non-franchised businesses.

The FAST Recovery Act may alter the relationship between franchisors and franchisees. The bill requires franchisors to ensure their franchisees comply with worker and public health laws, including any promulgated by the FFS Council. If a franchisor prevents a franchisee from compliance, the franchisee may take action against the franchisor for monetary and/or injunctive relief to ensure compliance. In addition, franchisors will be jointly and severally liable for Labor Code violations their franchisees commit. In addition, an agreement by a franchisee to indemnify a franchisor for liability will be considered contrary to public policy, and therefore void and unenforceable.

The FAST Recovery Act also gives a cause of action to any Covered Restaurant worker discharged, discriminated or retaliated against for exercising their rights and creates a rebuttable presumption of unlawful discrimination and retaliation for any adverse action taken against the worker within 90 days of the franchisor or franchisee knowing about the worker exercising their rights.

California is already regarded, by many, as an expensive and difficult state in which to operate a restaurant. Labor costs are among the highest in the nation, food costs are rising, and occupancy costs are higher than most markets. The restaurant industry is subject to oversight from multiple regulatory bodies, increasing the cost and complexity of development and operation. In addition, California law subjects restaurant operators to often costly litigation, much of it uninsured (e.g., class action wage and hour claims and PAGA claims).

The FAST Recovery Act creates new litigation bases for causes of action which may be uninsured and add to California's already challenging environment. If the FAST Recovery Act passes, restaurant operators may reduce new restaurant development in California and also seek ways to mitigate their burdens, such as replacing workers with technology.

Restaurant franchisors may consider and even rethink whether to do business in California.

The passage of the FAST Recovery Act may also impact on food prices, as operators adjust to the increased costs and potential risks created by the legislation, on top of already rising inflation. Restaurant food prices may also become challenging for many customers.

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