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PRACTICE BRIEF · EMPLOYMENT LAW

# AB 1228's Fast Food Minimum Wage and the Wave of California Wage Litigation

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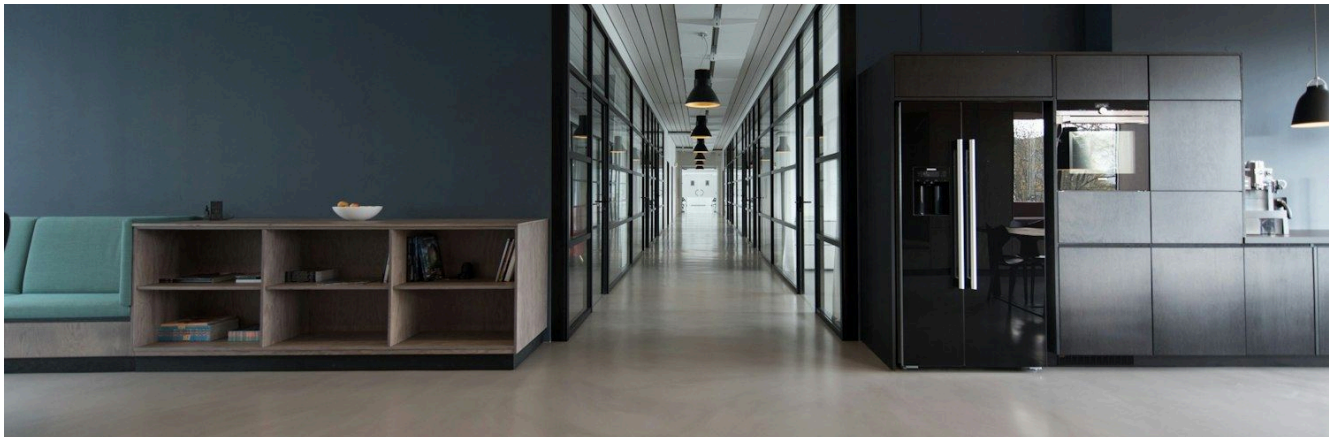

On April 1, 2024, California's **Fast Food Minimum Wage Law** — enacted through AB 1228 (FAST Recovery Act) — took effect, raising the industry-specific minimum wage to **$20.00 per hour** for workers at national fast food chains with 60 or more locations nationwide. The law created the Fast Food Council, a tripartite body empowered to set wages up to 3.5% annually and establish industry-wide working conditions through 2029.

Two years into the law's operation, one thing is clear: AB 1228 did not merely raise wages. It fundamentally altered the risk calculus for fast food operators, franchisors, and the broader service-industry ecosystem — and has spawned a litigation surge that continues to accelerate.

## I. The Statutory Framework

AB 1228 repealed AB 257 (the original FAST Act) after a successful industry referendum qualified for the November 2024 ballot, and replaced it with a negotiated compromise. The key provisions:

- **$20/hour floor** applicable to "fast food restaurant" employees at chains with ≥60 U.S. locations
- **Fast Food Council** with authority to set wages annually through January 1, 2029, capped at the lesser of 3.5% or CPI
- **No joint employer liability** for franchisors — a key concession to industry that repealed the franchisee liability provisions of AB 257

- **Anti-retaliation protections** for employees who raise wage complaints

Notably, the law covers only restaurants primarily engaged in selling food and beverages for immediate consumption where patrons order at a counter or kiosk. Full-service restaurants, grocery-embedded delis, and captive airport or stadium concessions are excluded.

> *"The wage floor created by AB 1228 was only half the story. The compliance obligations it imposed — and the PAGA exposure it created for operators who failed to comply — turned out to be the sharper edge."*

## II. The Litigation Wave: What Cases Are Being Filed

### A. PAGA Actions Based on Wage Differential Violations

The most prevalent litigation category involves operators who were slow to implement the $20 wage across all employees, including workers classified as shift supervisors who earned a salary premium over a $16/hour base. Under AB 1228, the $20 floor applies to all covered employees regardless of supervisory status unless the employee is a "manager" exempt under California wage orders. Plaintiffs have filed dozens of PAGA actions arguing that operators misclassified supervisory employees to avoid the higher floor, or that the new minimum retroactively elevated the base rate for overtime calculations in ways operators did not immediately account for.

### B. Off-the-Clock and Meal Period Claims Tied to the New Rate

When the minimum wage increases, **every existing wage-and-hour violation becomes more expensive**. Premium pay under Labor Code § 226.7 for missed meal or rest periods is calculated at "one additional hour of pay at the employee's regular rate of compensation." At $20/hour, that premium is $20.00 — 25% higher than it was at $16/hour. Plaintiffs' firms have systematically re-evaluated existing putative class and PAGA claims filed before April 2024, recalculating damages at the elevated rate and — where statutes of limitation permit — amending to add new periods of exposure.

### C. Franchisor Claims Despite the Liability Carve-Out

While AB 1228 does not impose joint employer liability on franchisors for AB 1228 wage violations specifically, it did not alter the pre-existing joint employer tests under Martinez v. Combs, 49 Cal.4th 35 (2010), or the NLRB's regulatory standard. Plaintiffs have filed cases against major franchisors arguing that the control exercised over franchisee wage-setting policies constitutes joint employment under these independent doctrines. Whether the AB 1228 carve-out insulates franchisors from the wage-and-hour consequences of their operational control is a question that remains unresolved in the appellate courts.

> *"Every time the minimum wage rises in California, the floor rises on every piece of wage litigation in the pipeline. AB 1228 was not a confined industry rule — it was an amplifier on existing exposure."*


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## III. The Spillover Effect on Adjacent Industries

One of the least-anticipated consequences of AB 1228 has been the competitive wage pressure it imposed on employers outside the fast food industry. When fast food jobs in Los Angeles and the Bay Area began paying $20/hour, adjacent employers — particularly in retail, hospitality, and warehouse logistics — faced immediate attrition as workers migrated to fast food chains.

This pressure produced two distinct legal consequences:

1. **Unilateral wage restructuring** at non-fast-food employers, which in organized workplaces triggered unfair labor practice charges under the NLRA when employers changed wage structures without bargaining
2. **Compensatory "retention bonuses"** that were structured in ways that arguably constituted wages under California law, creating new exposure under Labor Code § 203 for waiting time penalties when those bonuses were not paid on termination

## IV. Compliance Priorities for Covered Employers

KEY COMPLIANCE CHECKLIST

- Audit all employee classifications — the $20 floor applies to non-exempt employees regardless of supervisory title
- Recalculate overtime rates using the new base; the "regular rate of pay" for overtime purposes includes all non-discretionary compensation
- Review meal and rest break premium rates — all outstanding PAGA exposure recalculates at the higher wage
- Document the Fast Food Council's annual adjustment notices and implement wage changes on the effective date to avoid a new layer of PAGA exposure
- Evaluate whether any locations qualify for the captive-audience or grocery-embedded exclusions — misidentifying a covered location is itself a violation

## V. What Workers Should Know

If you work at a national fast food chain in California with 60 or more U.S. locations, **you are entitled to at least $20.00 per hour** as of April 1, 2024. This includes tipped workers — the tip credit that applies in other states does not exist under California law. Tips are yours on top of the $20 minimum.

If your employer has not paid you at least $20/hour since April 1, 2024, you may have a claim for unpaid wages, waiting time penalties under Labor Code § 203, and civil penalties under PAGA — which allows an employee to sue on behalf of the state and recover 75% of those penalties for distribution to the affected workforce.


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The statute of limitations for most wage claims is three years. The anti-retaliation provisions of AB 1228 also mean your employer cannot lawfully discipline, demote, or terminate you for raising a wage complaint.

*The legal landscape described reflects developments through Q3 2026 and may not reflect subsequent developments. Consult qualified counsel for advice specific to your situation.*

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