

## **A.B. 1228 & A.B. 610: Implications for Exempt Employees in the Fast Food Industry**

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Assembly Bill No. 1228 (“A.B. 1228”) took effect in California on April 1, 2024. A.B. 1228 was passed with the primary purpose of increasing the minimum wage for non-exempt fast food restaurant employees to \$20 per hour. Relatedly, the fast food industry should brace for the new law’s impact on the minimum required salary for employees to qualify for California’s administrative, professional, or executive exemptions.

Under existing law, employees classified as exempt under the administrative, professional, or executive exemptions must be paid a salary of at least twice the state minimum wage for full-time employment. A.B. 1228 provides that “the hourly minimum wage established [by A.B. 1228] shall constitute the state minimum wage for fast food restaurant employees for **all purposes** under [the Labor Code] and the wage orders of the Industrial Welfare Commission.” (Emphasis added.)

Therefore, beginning April 1, 2024, the applicable minimum salary for exempt fast food restaurant employees has risen to \$83,200 per year (i.e., 2 x \$20 x 40 hours/week, or \$1,600/week). The California Labor Commission, also known as the Division of Labor Standards Enforcement (“DLSE”), recently confirmed this interpretation of A.B. 1228 in FAQ No. 15 within its Fast Food Minimum Wage Frequently Asked Questions (<https://www.dir.ca.gov/dlse/Fast-Food-Minimum-Wage-FAQ.htm>).

Fast food chains, broadly defined in the Bill as “limited-service restaurants consisting of more than 60 establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services, and which are primarily engaged in providing food and beverages for immediate consumption on or off premises where patrons generally order or select items and pay before consuming, with limited or no table service,” fall under the ambit of A.B. 1228. Based on the

DLSE's response to FAQ No. 6, A.B. 1228 "applies **only** to employees of fast food restaurants" as defined above. (Emphasis added.) This suggests that employees performing administrative and personnel functions in the company's corporate office(s) probably do not fall under the new law.

Given the magnitude of A.B. 1228, lobbying efforts have been urgently underway to carve out exceptions to the law. Assembly Bill No. 610 ("A.B. 610") was introduced on February 22, 2024, signed by the Governor on March 26, 2024, and took effect on April 1, 2024. A.B. 610 clarifies the scope of fast food restaurants and employers covered by A.B. 1228, exempting several categories of food service establishments from the industry-specific minimum wage and other standards set forth in A.B. 1228. In addition to A.B. 1228's existing exemption for bakeries (i.e., establishments producing bread for sale on premises as a "stand-alone menu item"), A.B. 610 added exemptions for fast food restaurants within specified airports, hotels, event centers (e.g., stadiums, concert halls, convention centers, etc.), theme parks, museums, casinos, and corporate campuses, as well as those on public lands.

Importantly, the DLSE has made clear that that the "employer will carry the burden of showing they are not covered by the new law." Fast food employers in California must familiarize themselves with A.B. 1228 and A.B. 610 to ensure compliance with their requirements, if applicable, particularly with respect to calculating the pay of exempt employees.

Should you have questions concerning obligations under A.B. 1228, please contact the authors for clarification and guidance. With decades of combined experience and extensive knowledge, AALRR attorneys are trusted advisors well-equipped to navigate you through uncharted legal landscapes.

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