

Franchise Operator On Pitfalls Of Calif.'s Fast-Food Min. Wage

By Daniela Porat

Law360 (April 19, 2024, 4:10 PM EDT) -- Rich Reinis, a member of California's newly formed Fast Food Council, said he wants to give back to the people of California and keep fast food affordable, especially as industry workers now earn a \$20 minimum wage.



Rich Reinis

The **Fast Food Council** with the Department of Industrial Relations is made up of nine voting members tasked with **developing standards and regulations** for the state's fast-food industry. Gov. Gavin Newsom enacted A.B. 1228 in September, creating the council and establishing a \$20 minimum wage floor for fast-food workers that went into effect April 1.

Reinis, who is a part owner of the Southern California Krispy Kreme franchise, was appointed to the council by Newsom in March. He said he hopes to be a "voice for the industry, both franchisor and franchisee," and to effect change through compromise.

"I'm hopeful to get consensus on the council as a representative of franchisors and franchisees, and working with the union to come up with a way to balance this legislation," he said. "Consensus from knowledgeable people who know what it means to run a restaurant will produce much better legislation than we have now."

Here, Law360 speaks with Reinis, who is also a partner with Thompson Coburn LLP, about how he envisions the council's role in shaping California's fast-food industry. This interview has been edited for length and clarity.

What do you want to see accomplished as a member of the Fast Food Council?

First and foremost, I think it's important that we keep fast food affordable.

If it isn't affordable, to a certain extent, the act is self-defeating. We have to have fast-food prices that are realistic for people who are on modest incomes ... my focus is on: how can we assist in helping those covered by the act do that.

If you're supervising someone who is now earning \$20 an hour, and you were previously making 19, you're going to turn to your employer and say, 'I can't supervise someone who's making more than me, you have to raise me to 21 or some such number.' You can see that it has a ripple effect in that organization. It also has a very horizontal impact. And I can tell you, from personal experience from the many operators that I've talked to, that those who are not covered by the act are facing wage pressure because their employees could jump across the street, go to a franchise food restaurant and earn more than they're earning in the mom-and-pop.

This act is reducing profitability in restaurants until corrective measures are put in place. It's inevitable. You can't price a commodity like pizza or hamburger or chicken above a certain level without losing business.

I operated at one time 31 Krispy Kremes with 1,400 employees. I know what it means to make payroll. And I know what it means to try to keep my prices within the reach of my customers.

Are the issues the Fast Food Council was formed to address a matter of reforming the law or improving enforcement?

I believe there is very substantial data to support the claim that the restaurant industry is not a bad actor. ... It's a sitting duck. That's why it's the target here.*

Based upon their population, the claims made by employees for wage theft, working condition violations, workers' comp claims, class actions for various violations of our Labor Code, all of those things on a per capita basis are less than most other industries.

One of the [complaints] that I've heard when I canvass people who are covered by the act is: 'Why us? Why are you picking on us? This should apply to everybody. There should be a \$20 minimum wage for every California worker.' And the answer isn't a good one. The answer is the Legislature believed this was a bad actor, that the industry itself, which is now subject to this act, was somehow worse than other industries. But the facts are contrary.

It troubles me a great deal that the facts do not support this. And the result of it is the industry is unfairly burdened with this statute when other industries don't have to do this.

**Reinis pointed to an Employment Policies Institute report, originally published in August 2022 and updated in April 2023, that looked at wage and hour violations data from the California Department of Industrial Relations. Fast-food establishments accounted for 1.6% of total average wage claims per year filed with the state between 2017 through 2022, according to the report. Adjusting the data to account for potential miscategorization of restaurants by the state, fast-food establishments accounted for an average of 2.3% of such wage claims. The fast-food industry accounts for 3.2% of overall employment in the state.*

"Controlling for variances in employment size in different industries, the annual average rate of wage claims in the limited-service restaurant industry is up to five times lower than other industries," the report said.

The Fast Food Council is seen as a compromise between industry and labor. What's unique about this sectoral bargaining approach?

What's unique is that the employment practices of one particular employer are irrelevant. In this particular case, it's employment practices of an industry. And those employment practices are typically government-related, that is, everybody in a particular industry has to abide by the same set of rules. A collective bargaining agreement is typically between a union and an employer and those sets of rules which are agreed to in a collective bargaining agreement only apply to that single employer. The set of rules that have now been put in place by A.B. 1228 apply it to everyone who meets the description of a fast-food franchise operator.

It is more difficult for employers to meet the obligations that exist under A.B. 1228 or collective bargaining agreement when those employers are different in their approaches to work and how they create a community for their employees, how they treat their employees.

I'm concerned as a businessman, as an owner of Krispy Kreme doughnut shops, that our employees will be covered by the same statutory set of rules and regulations that will apply to other employers and whose employment practices I'm not familiar with. I'm invading their turf on the council, and our recommendations will apply to our employees as well as employees across the board. So it's quite different.

What's an example of that tension?

Let's assume that I'm an employer who grants raises on a merit basis. That is to say employees that demonstrate a work ethic and attitude consistent with that I hold dear in my company.

I can't evaluate people now based on their merit ... I have to grant a raise across the board to everyone covered regardless of whether they merit it or not.*

I think most folks won't be thinking about this. Let's assume that I had established a periodic raise of a minimum of 5% for employees who met certain qualifications. Now, my obligation isn't 5%. It's reduced to 3.5% or [the Consumer Price Index], if it's lower. So instead of granting employees who deserve it a 5% increase, I would default to what the statute says.

**A.B. 1228 established a minimum wage of \$20 an hour for fast-food employees on April 1, 2024. Beginning in January 2025, the Fast Food Council can raise the minimum wage annually by at least 3.5% or according to calculations based on the Consumer Price Index for Urban Wage Earners and Clerical Workers, whichever is lower.*

What else do you want people to know about the council?

When you talk about operating a business or legislating, which in this case, brings me to the council, one of the things that sits in the background is what we used to call the ROM drive on your computer. It's the stuff that you don't think about but is operating your computer.

For example, we go to the first council meeting, and there's no time together ... we all sit down. Hello, who are you? What's your name? And the eight council members plus its leader don't know each other at all.

I asked for a schedule. We don't have a schedule. I asked for an agenda. We don't have an agenda. I asked for a contact list. We don't have a contact list.

Given the procedural inefficiencies of the first meeting, I worry that the next meeting which is not yet scheduled, has no agenda, is way off in the future, and there's a lot of work to be done. And I worry that the best substantive minds from the union, from me, from the other members of the council will be frustrated in fulfilling their legislative mandate by procedural setbacks.

--Editing by Amy Rowe.

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