

From: California Fast Food Workers Union, SEIU

To: Interested Parties

Re: Ice Cream parlors and California Fast Food Council / fast food minimum wage

Date: August 30, 2024

AB 1228 created a \$20 minimum wage for workers of limited service restaurants and a Fast Food Council to set standards for restaurants in the industry. The language defining such restaurants clearly includes ice cream parlors and shops. Yet operators of some ice cream shops are attempting to avoid paying California’s \$20 fast food minimum wage, asserting, “Ice cream parlors were not the legislative intent of the bill.” [AB 1228]. That is exactly what Handel’s Ice Cream franchise owner Gabriella Campbell told the Fast Food Council at its meeting July 31, 2024.¹ At the March 15, 2024, council meeting, Ms. Campbell also claimed that the legislation excludes ice cream parlors and other snack and nonalcoholic beverage bars from coverage. She bases this assertion on the fact that the legislation references NAICS Code 722513, which lists a number of types of establishments which fall within its definition and which excludes “snack and nonalcoholic beverage bars.”² However, the legislation’s reference to the industry code is illustrative only, and the plain language of the definition of limited service restaurants within AB 1228 clearly covers ice cream parlors or shops.

Ms. Campbell also stated that most of the franchise’s workers are young, part-time and seasonal employees, as if this were evidence that the Legislature intended to exclude ice cream parlors from coverage of AB 1228.³ Ms. Campbell claimed she has never received a clear answer on whether ice cream parlors are covered by AB 1228 and has gotten the “runaround” on the question from various officials.⁴ An analysis of AB 1228, however, makes it abundantly clear that there is no legal basis for an exception for “ice cream” from coverage under the legislation. Further, we have found no testimony on AB 1228, guidance issued by the Department of Industrial Relations, or statements by or behavior of ice cream franchises other than Handel’s, which would support a finding that ice cream parlors or shops are not covered

¹ Jacque Porter, Eytan Wallace, California’s new Fast Food Council hears from employees, franchisees, KGET, August 1, 2024. <https://www.kget.com/news/state-news/californias-new-fast-food-council-hears-from-employees-franchisees/>

² U.S Census, 2022 NAICS Definition, 722513 Limited-Service Restaurants. <https://www.census.gov/naics/?input=722513&year=2022&details=722513>

³ Public Comment of Gabriella Campbell at meeting of Fast Food Council, March 15, 2024, approx., 2:31:55 to 2:35. <https://videobookcase.org/ca-dir/fast-food-council/2024-03-15/>

⁴ Jacque Porter and Eytan Wallace, California’s new Fast Food Council hears from employees, franchisees, Fox 5, August 1, 2024. <https://fox5sandiego.com/news/california-news/californias-new-fast-food-council-hears-from-employees-franchisees/amp/>

by AB 1228. A more thorough legal analysis can be found below, establishing that there is no “ice cream” exception to the coverage of AB 1228.

Legal analysis & legislative record:

- AB 1228 applies to limited-service restaurants that are part of a national chain. The law defines a national fast food chain based on size and other characteristics. It then defines “limited service restaurants” as those “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.”⁵
- This plain-language definition of limited service restaurants includes ice cream parlors and other snack shops. Ice cream cones, sundaes, etc. are food and all but require immediate consumption, and ice cream parlor customers order and pay before eating them, typically without table service.
- While the statute does offer a non-exclusive example of limited service restaurants as those with the NAICS Code 722513, the statute clearly states its coverage “is not limited to” restaurants with that NAICS code. Further, since the first, broader definition clearly covers ice cream parlors, the second, more narrow, but not exclusive definition does nothing to remove ice cream parlors from the definition of covered establishments.
- Thus, the contention that ice cream shops and other snack and nonalcoholic beverage bars are excluded is simply not supported by the language of the statute. If the Legislature had intended to exclude ice cream parlors and/or other snack and nonalcoholic beverage bars it would have explicitly stated that exclusion and would not have used the “includes, but is not limited to” language in reference to NAICS 722513.
- The California [Department of Industrial Relations FAQ](#) supports this interpretation. It clearly states that ice cream shops as well as other snack and drink shops may have to pay the new \$20 minimum wage if they meet the definition of a fast food restaurant:

“Could a shop that features ice cream, coffee, boba tea, pretzels, cookies, or donuts be considered a fast food restaurant covered by the new law?”

⁵ California Assembly Bill No. 1228. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1228

Yes, the definition of ‘fast food restaurant’ ... does not depend on what type of food or beverage an establishment sells.”⁶

- The FAQ further states that a fast food restaurant is one, “where the customers order food or beverage items and pay for those items before the items are consumed.” and “The restaurant is primarily engaged in selling food and beverages for immediate consumption.” An ice cream parlor squarely falls within this definition.
- Similarly, the attorney who advises the Fast Food Council, Miles Locker of the Labor Commissioner’s office, stated at the Council’s March 15, 2024, meeting that “chain donut stores, ice cream shops, cafes selling coffee and tea, boba tea shops, etc.,” are covered by the law.⁷
- While the Legislature did adopt some exemptions to the fast food minimum wage and AB 1228’s coverage, such as establishments that sell loaves of bread⁸ and restaurants within grocery stores,⁹ airports, hotels and theme parks,¹⁰ the Legislature did not include ice cream shops or parlors in those exemptions.
- A lobbyist for the International Franchise Association, which initially fought the creation of the Council, recognized that the definition of limited service restaurants in the legislation “takes in everything from the traditional fast-food places to an ice cream store or a bagel store or a yogurt shop.”¹¹ Ultimately the trade group agreed to the compromise bill that created the Council.¹²
- At hearings on the final version of the legislation that raised fast food workers’ pay to \$20 an hour¹³ and the “clean-up bill” that created the carve outs for airports,

⁶ Fast Food Minimum Wage Frequently Asked Questions, California Department of Industrial Relations, retrieved August 7, 2024. <https://www.dir.ca.gov/dlse/Fast-Food-Minimum-Wage-FAQ.htm>

⁷ Miles Locker, speaking at meeting of Fast Food Council, March 15, 2024, approx., 1:12:53. <https://videobookcase.org/ca-dir/fast-food-council/2024-03-15/>

⁸ California Assembly Bill No. 1228. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1228

⁹ California Assembly Bill No. 1228. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1228

¹⁰ California Assembly Bill No. 610. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB610

¹¹ California Assembly Bill No. 1228. <https://labusinessjournal.com/featured/owners-lobby-to-slow-fast-act/>

¹² IFA STATEMENT ON SIGNATURE OF AGREEMENT TO PROTECT CALIFORNIA RESTAURANTS, September 28, 2023. <https://www.franchise.org/media-center/press-releases/ifa-statement-on-signature-of-agreement-to-protect-california>

¹³ See videos of hearings on AB 1228: Senate Appropriations Committee, September 12, 2023, approx. 11:50 to 15:50; <https://www.senate.ca.gov/media/senate-appropriations-committee-20230912> ; Senate Labor Committee September 12, 2023, approx.. 2:30 to 15:30. <https://www.senate.ca.gov/media/senate-labor-public-employment-retirement-committee-20230912> ; Assembly Labor Committee, September 14, 2023, approx. 48:00 to 56:00. <https://www.assembly.ca.gov/media/assembly-labor-and-employment-committee-20230914>

hotels, and theme parks, there was no discussion or request from ice cream or snack shop operators opposing the new wage or seeking an exemption.¹⁴

Industry behavior and statements:

In addition to this analysis of the text and legislative history of the law creating the Fast Food Council, an assessment of the statements and behavior of fast food industry leaders suggests that many of them do not agree with Ms. Campbell that there is any confusion about whether ice cream shops and other snack/beverage bars are considered limited service restaurants for purposes of AB 1228 and thus covered by the new minimum wage. For example:

- The company that owns Cold Stone Creamery ice cream; Pinkberry frozen yogurt; and Tasti-D-Lite soft serve, among other brands,¹⁵ categorizes them as “Quick Service Restaurants,” along with its other fast food brands, such as America’s Taco Shop, Blimpie, Built Custom Burgers, and Papa Murphy’s Pizza.¹⁶ The company’s CEO told investors in February 2024, “California increasing from \$16 to \$20 in April is going to hurt...”¹⁷
- FAT Brands, which owns Marble Slab Creamery, puts that brand, along with Great American Cookie; Round Table Pizza; and Hot Dog on a Stick in its “Quick Service” category.¹⁸ FAT Brands’ chair told investors in March 2024, “we have the new increased minimum wage coming in California in just a few weeks to \$20,” which he described as “good news as it applies to everybody, not just FAT Brands.”¹⁹
- Alex Johnson, who owns five Auntie Anne’s Soft Pretzel locations and four Cinnabon locations, originally supported the legislation but more recently has expressed

¹⁴ See videos of hearings on AB 610: Senate Appropriations Committee, February 26, 2024, at approx. 6:00

<https://www.senate.ca.gov/media/senate-appropriations-committee-20240226> ;

Senate Labor Committee, February 21, 2024 at approx. 6:50. <https://www.senate.ca.gov/media/senate-labor-public-employment-retirement-committee-20240221>

¹⁵ MTY Food Group owns and franchises the Cold Stone Creamery and Pinkberry frozen yogurt brands. See MTY Food Group, “Our Brands,” retrieved August 9, 2024. <https://mtygroup.com/en/our-brands/>. Both brands have stores in California. See: “Cold Stone Creamery Locations,” retrieved August 9, 2024

https://www.coldstonecreamery.com/locator/index.php?brand=14&mode=desktop&pagesize=7&mi_or_km=mi&q=90210 and Pinkberry locations, retrieved August 9, 2024

<https://www.pinkberry.com/locator/index.php?brand=24&mode=desktop&pagesize=5&q=los+angeles%2C+a>

¹⁶ MTY Group annual report 2023, p. 47. https://mtygroup.com/wp-content/uploads/2024/05/MTY_RAPPORT-ANNUEL-2023_8.5x11_INTERIOR_CONSOLIDATED_EN.pdf

¹⁷ Q4 2023 MTY Food Group Inc Earnings Call, February 15, 2024. <https://seekingalpha.com/article/4670570-mty-food-group-inc-mtyff-q4-2023-earnings-call-transcript>

¹⁸ FAT Brands SEC Form 10-K, fiscal year ended December 31, 2023, p. 4.

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1705012/000162828024010647/fat-20231231.htm>

¹⁹ Q4 2023 FAT Brands Inc Earnings Call, March 7, 2024. <https://seekingalpha.com/article/4676864-fat-brands-inc-fat-q4-2023-earnings-call-transcript>

concerns about what the new minimum wage will do to his business, but his statements clearly indicate that he understands his restaurants are covered by the law^{20,21}

- Ice cream shops, donut shops, and other snack/beverage operators – *including Handel's* – are advertising California jobs at \$20 an hour. See below screenshots of recent ads from the hiring site Indeed:

Team Member

Dairy Queen Magnolia Center, Riverside
Riverside, CA 92506 (Magnolia Center area)

\$20 - \$22 an hour Full-time +1 Monday to Friday +3

➤ Easily apply

- Family oriented ice cream franchise with over 60 year history of success in the Inland Empire seeks dependable team members.
- Hiring staff not on site***.

Active 6 days ago · More...

Baskin Robbins Team Member

Baskin Robbins
Burbank, CA 91502

From \$20 an hour Part-time 20 to 30 hours per week
Monday to Friday +4

➤ Easily apply

- Flexible scheduling and easy to take time off.
- Customer service and detail oriented.
- Quick learner and has the ability to adapt to changes.

Active 6 days ago · More...

Dunkin Downtown Bakersfield \$20/hr

Dunkin Donuts-Santa Anna [📍](#) · 3.3 ★
1800 23rd Street, Bakersfield, CA 93301
From \$20 an hour - Part-time, Seasonal, Full-time

[Apply now](#) [🔖](#)


²⁰ IFA STATEMENT ON SIGNATURE OF AGREEMENT TO PROTECT CALIFORNIA RESTAURANTS, September 28, 2023.

<https://www.franchise.org/media-center/press-releases/ifa-statement-on-signature-of-agreement-to-protect-california>


²¹ Kristen Altus, California fast food franchisee slams new minimum wage, invests in Nevada over six-figure loss, FOXBusiness, April 2, 2024. <https://www.foxbusiness.com/politics/california-fast-food-franchisee-new-minimum-wage-invests-nevada-six-figure-loss>


Team Member

1107 Jamba Juice
San Carlos, CA 94070
\$20 - \$21 an hour - Part-time, Full-time

[Apply now](#) 

Ice Cream Scooper

Handel's Homemade Ice Cream  · 3.7 ★
4475 Mission Boulevard, San Diego, CA 92109
\$20 - \$24 an hour - Part-time

[Apply now](#) 

No youth, part time or seasonal exemption:

As to Ms. Handel's implication that her shop should be excluded because it employs young, part-time or seasonal workers: The Legislature did not create a lower minimum wage for younger, seasonal or part time workers, so there is no legal merit to this implication. In fact, most fast food workers are part time.²² Some are young people while others are grandparents.

As a matter of policy, asking government for permission to pay younger workers a lower wage for doing the same work as adults is essentially a request for government to approve a form of age discrimination. It is also an incentive for employers to hire children at a time when there is already a national crisis of employers illegally employing children in dangerous occupations and requiring them to work long hours when they should be in school or studying and when employers have persuaded some states to loosen restrictions on child labor.²³

²² Bureau of Labor Statistics, Average weekly hours of production and nonsupervisory employees, limited-service restaurants, 2023 annual average = 23.7. Retrieved from <https://www.bls.gov/ces/data/>

²³ Nina Mast, Youth subminimum wages and why they should be eliminated, Economic Policy Institute, January 8, 2024. <https://www.epi.org/blog/youth-subminimum-wages/>