



Raising Standards for Fast-Food Workers in California

The Powerful Role of a Sectoral Council

By David Madland April 15, 2021

Fast-food workers across the United States, often adults living in or close to poverty, typically earn very low wages with few benefits and experience poor working conditions. Setting and enforcing high standards in the industry is particularly challenging: It is heavily franchised, many small employers in the industry have little ability to profitably raise standards, and most workers are not unionized, making the fast-food sector in urgent need of improvement.

California can take action at the state level to address these problems and improve the lives of the state's more than half a million fast-food workers by creating a sectoral council, as called for in the proposed FAST Recovery Act.¹ A sectoral council brings together representatives of workers, employers, and the public to make recommendations regarding minimum compensation, safety, scheduling stability, and training standards for the industry. This important step could help build a new model of standard-setting for the fast-food industry and the country.

A fast-food sectoral council is well-suited to address the industry's challenges and could form the backbone of fundamental change in the sector by benefiting both workers and employers. It would not only raise wages, benefits, and safety standards for workers—regardless of whether they are directly employed by a lead firm or a franchisee—but also provide a forum for workers and employers to influence the standards in their industry, enabling franchisees to compete on a level playing field. A sectoral council would also help engage workers so they can promote high standards and ensure that employers comply with these standards. Enabling workers and employers to bring their experiences and voices into the process and have ongoing roles in setting standards is critical to achieving transformational change and improving fast-food jobs.

Background on sectoral councils

Sectoral councils—which are related to wage boards but more robust—bring together key players in an industry to make recommendations covering all workers and firms in that industry. Unlike most wage boards, sectoral councils are empowered

to make recommendations on a broad range of interrelated issues, such as compensation, safety, and training, rather than focusing on a single problem such as low wages. They also build in robust mechanisms for worker and employer input.²

Sectoral councils can cover all workers in an industry regardless of whether they are franchised, subcontracted, or hired directly by a lead firm; whether they are employees or independent contractors; or whether or not they are unionized. They conduct hearings and outreach activities as well as issue reports on their findings. Unlike most commissions and other bodies, their recommendations carry significant legal weight and trigger governmental review and action.

Sectoral councils can also help workers come together to gain a stronger voice in advocating for themselves. The sectoral council process provides strong legal protections for participating workers. Furthermore, the process of workers exercising their rights to testify at hearings, calling for the council to issue recommendations, and encouraging the government to act on recommendations can help unify workers and drive the industry forward. Sectoral standard-setting also leads to higher compensation for all workers in the industry; standardizing compensation tends to limit opportunities for discrimination and thereby helps close pay gaps faced by women and people of color.³

In addition, sectoral councils can benefit firms, including franchisees, by providing an opportunity for these employers to have meaningful discussions with workers as well as with the leading franchising firms. The councils' recommended standards can ensure that high-road firms that want to provide good wages and benefits are able to do so profitably and are not undercut by low-road companies providing poverty-level compensation. Because sectoral standards guarantee similar pay for similar work, they can encourage firms to compete based on productivity and innovation rather than low compensation.⁴

Sectoral councils and similar bodies have proved successful in a number of industries and regions. For example, the state of New York brought together representatives of workers, employers, and the public in a wage board to raise wages for fast-food workers in 2015.⁵ The board created a process for wages to reach \$15 per hour and provided different adoption speeds for different parts of the state, even before the state legislature passed a \$15 minimum wage for all workers.⁶ The state of New York also established a farm labor wage board in 2020.⁷ Similarly, the city of Seattle created a Domestic Workers Standards Board for domestic workers, employers, private households, worker organizations, and the public to consider ways that poor working conditions such as low wages and inadequate protections can be improved.⁸

California's Industrial Welfare Commission has a long-standing process for issuing wage orders setting minimum wages for different industries that can involve representatives of workers, employers and the public, though this process has largely been inactive over recent decades.⁹ In January 2021, Assemblywoman Lorena Gonzalez (D) introduced the FAST Recovery Act to target the fast-food industry in California for improvements.

The bill would establish a fast-food sector council consisting of 11 members representing workers, employers, and the government. The council would make recommendations for industrywide standards regarding issues affecting the health, safety, and employment of fast-food restaurant workers, including the wages and working conditions of those workers and the health and safety of fast-food restaurant consumers. The council differs from California's existing wage order process in that it covers a wider range of issues necessary to address challenges in the industry, and it provides strong protections for worker participation. Among other things, the bill would create a participatory process for regularly updating health, safety and employment standards in the fast-food industry.¹⁰ It also includes provisions that aim to hold lead firms and their franchises jointly responsible for upholding standards.

California's fast-food industry and its workers

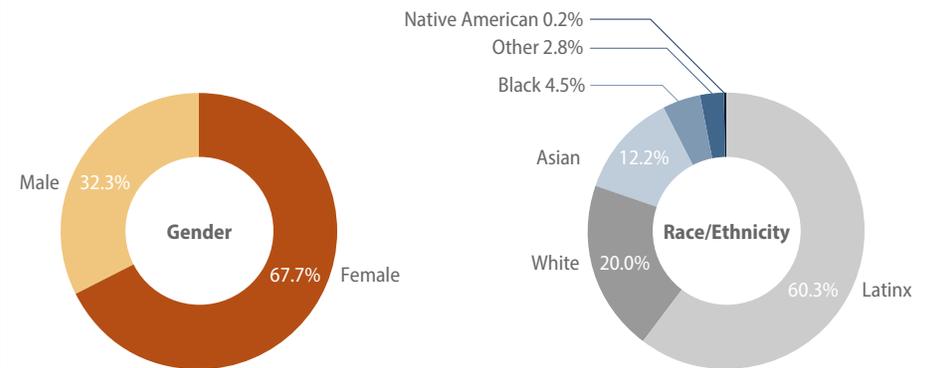
The fast-food industry is a large, heavily franchised industry rife with poor working conditions, including low pay, few benefits, heavy reliance on public support programs, and frequent violations of workplace laws. The conditions in the industry demand improvement.

California's fast-food workers earn some of the lowest wages in the state, averaging \$13.27 an hour according to the U.S. Bureau of Labor Statistics.¹¹ Of occupations in California with more than 100,000 workers, only farm workers earn less, averaging wages of \$13.25.¹² Benefits in the fast food industry are also low, with estimates suggesting that just 13 percent of core front-line fast-food workers receive health benefits through their employer.¹³ Most fast-food workers work between 16 and 34 hours a week, with a third working full time.¹⁴ Although many fast-food workers have multiple jobs, most do not work enough hours with any one employer to qualify for benefits.¹⁵ Employers often provide work hours and schedules with little notice, with workers sometimes receiving their schedules only a few days in advance and their hours varying greatly from week to week.¹⁶ Not surprisingly, turnover in the industry is very high—more than 100 percent according to industry estimates—meaning that each job needs to be filled more than once per year.¹⁷

Fast-food workers often rely on taxpayer-funded safety net programs to make ends meet: The majority of families of front-line fast-food workers are enrolled in one or more public programs, such as Medicaid, the Children's Health Insurance Program, and the Supplemental Nutrition Assistance Program (SNAP).¹⁸ A 2021 study found that more than two-thirds of fast-food workers in California were themselves enrolled or had a family member enrolled in a safety net program at a public cost of \$4 billion a year.¹⁹

FIGURE 1
Women and people of color make up a disproportionate share of California's fast-food workforce

Demographic composition of fast-food workers in California



Source: UCLA Labor Center and others, "The Fast-Food Industry and COVID-19 in Los Angeles, Table 9" (Los Angeles: 2021), available at https://www.labor.ucla.edu/wp-content/uploads/2021/03/FastFood_Report_2021_Final.pdf.

The demographics of workers in the industry also indicate that these jobs provide critical support for workers and their families and are not primarily about teenagers earning pocket money, as some opponents of minimum wage increases contend.²⁰ Sixty percent of fast-food workers across the nation are over age 20, and 1 in 5 are over age 35.²¹ Sixty percent of fast-food workers in California are Latinx, more than 80 percent are nonwhite, two-thirds are women, and 20 percent have children.²² The typical fast-food worker brings in one-third of their family's income, and more than half of fast-food worker households spend more than 30 percent of their income on rent.²³

Violations of employment law in the industry are rampant, and harassment and even violence are all too common. According to one national survey of fast-food workers, 89 percent said they had been subject to violations of workplace laws such as being refused overtime pay, prevented from taking required breaks, working off the clock, or being placed in unsafe conditions.²⁴ A 2017 study conducted by the Economic Policy Institute found that "workers in food and drink service" are more likely than workers in other industries to experience minimum wage violations,²⁵ while a 2016 review conducted by *Bloomberg News* found at least one violation of the Fair Labor Standards Act in three-fourths of fast-food restaurants investigated by the U.S. Department of Labor.²⁶ In one survey from this year, three-fourths of female workers at a major fast-food chain reported being harassed at work.²⁷ Not only are violations of workplace law frequent in the industry, but fast-food workers are also often subject to violent incidents including shootings, robberies, and assaults.²⁸ In addition, fast-food workers and their communities face a disproportionately high risk of COVID-19 transmission and its associated harms.²⁹

In 2021, the market size of the U.S. fast-food industry, measured by revenue, was more than \$280 billion,³⁰ with fast-food sales in California totaling \$20 billion in 2020.³¹ A handful of large, profitable franchisors dominate the industry, but most of

the firms are made up of smaller franchisees.³² The top 10 fast-food companies in the United States had more than 80,000 franchises in 2018.³³ Yet each fast-food establishment averages fewer than 20 workers, and profit margins for individual franchisees are notoriously low.³⁴

The fast-food industry was economically less affected by the pandemic than many other industries, is rapidly recovering, and is expected to continue growing in the future. While employment in the fast-food sector in California fell to a low of 531,000 in April 2020 due to the pandemic, the industry quickly gained back many lost jobs, with employment rising to 617,000 as of December 2020.³⁵ The California Employment Development Department predicted that fast-food industry employment would grow by about 15 percent between 2018 and 2028.³⁶

Why California's fast-food industry needs a sectoral council

Sectoral standard-setting is particularly well-suited to “fissured” industries such as fast food that largely comprise smaller employers with little ability to raise wages on their own. These industries tend to face pressure to keep their labor costs low, experience barriers to collective bargaining, face limitations in the changes that purely legislative approaches can achieve, and need empowered workers to ensure compliance with and enforcement of high standards.

Franchisees face pressure to keep labor costs and standards low

The fast-food sector is an emblematic example of what professor and labor policy expert David Weil calls “fissuring,” where leading firms place intermediaries between themselves and workers through layers of franchising, contracting, or other means.³⁷ As a result of this fissuring, “[e]mployment decisions... have been devolved from major employers to a complex network of smaller employers.”³⁸ Because lead firms still exert significant control over most of the smaller firm’s choices, fissuring creates “intense pressure” for the small firm to lower labor costs.³⁹

Indeed, as franchising researcher Brian Callaci explains, franchising contracts “incentivize franchisees to focus on minimizing labor costs.”⁴⁰ Callaci argues in a series of papers that “[f]ranchise contracts represent a labor market strategy, despite franchisors not formally employing production workers.”⁴¹ Franchising agreements allow the lead firm to dictate most aspects of the business—such as prices, suppliers, and customer restrictions on franchisees—which almost necessitates poor working conditions. “By removing non-labor variables from the franchisee’s profit-maximizing choice set,” Callaci explains, these agreements “compel franchisees to focus on minimizing labor costs and extracting labor effort for their profit margins, to the exclusion of alternative profit-maximizing strategies like charging higher prices, substituting cheaper inputs, investing in training, or motivating employees with efficiency wages.”⁴²

The franchising model not only tends to drive down labor standards but also creates conditions that make raising standards particularly difficult. Many of the individual franchises have little ability to raise wages on their own, even if they wanted to. Their franchise agreements dictate many of their business decisions and provide little room to make profits with higher labor costs. As the law professor Catherine Fisk argues, “a franchisee who believes employees should be paid more cannot make a profit under the [franchise] formula if he raises wages and he will lose his franchise if he cannot make the payments required under the agreement.”⁴³

A sectoral council would provide an avenue for all employers to have a voice in the industry and for fast-food workers to receive fair pay and higher standards industry-wide, ensuring that firms can provide good wages and benefits profitably without facing competition from companies paying poverty-level wages.

Fast-food workers experience barriers to collective bargaining

Collective bargaining also faces steep challenges in the industry. Only around 1 percent of workers at food service and drinking places, of which fast food is a subset, are members of unions as of 2020—and union density within the fast-food industry is likely even lower.⁴⁴ The process of joining a union in any industry is unfortunately an excessively difficult task due to broken federal labor laws that fail to guarantee workers basic rights.⁴⁵ The structure of the fast-food industry compounds these difficulties. For example, very high turnover means that workers are constantly joining and leaving a firm, making relationships and solidarity difficult to build. Furthermore, most franchises are small employers, which means unions would need to organize thousands of very small shops to effectively negotiate pay and working conditions.

Indeed, the traditional U.S. model of workplace-by-workplace organizing and collective bargaining is ill-suited to heavily fissured industries such as fast food. Even if the majority of workers at a particular store location voted to join a union, they would be extremely unlikely to be able to negotiate for better working conditions, with the lead firm claiming no responsibility, the franchisee claiming no ability, and the location possibly closing to prevent negotiations from occurring at all. Moreover, should the workers in a given store succeed in negotiating a contract, the store would then have higher labor costs than its competitors, potentially creating a range of economic difficulties.

To effectively bargain, unions would not only need to organize many very small workplaces but also bring the lead franchise firms to the table. As Fisk explains, “Without the lead employer at the bargaining table or responsible for unfair labor practices, employees and the labor contractor or franchisee cannot raise wages or improve working conditions.”⁴⁶

In this context—where union density is very low, organizing workplace by workplace is fraught, and the sector remains heavily fissured—systems such as sectoral councils that bring all parties to the table and set standards for all workers in the

industry are required.⁴⁷ Indeed, research suggests that sectoral systems lead to greater contract coverage for people employed by small firms as well as those who work part time or in nonstandard employment.⁴⁸

Legislative standard-setting alone suffers limitations

Traditional governmental standard-setting, such as minimum wage laws, can improve working conditions and help overcome coordination challenges. However, relying solely on legislative standard-setting suffers from several shortfalls in the fast-food industry. Legislating standards misses an opportunity to create a forum for workers and employers—especially franchisees—to discuss industry issues. As a result, piecemeal legislation on separate workplace standards may not address all the needs of workers and employers in the industry. This approach may also miss important concerns because workplace issues such as compensation, scheduling, safety, and training are often interrelated. The back-and-forth discussions fostered by a sectoral council, in contrast, can often better address the full range of issues facing the industry.

Fast-food workers need a forum to enforce standards and ensure compliance

Finally, standards need to be enforced, and that requires workers having sufficient power and organization to foster compliance at their worksites. Even the very best system of governmental enforcement is not capable of effectively policing thousands of individual workplaces, nor would it make workers feel comfortable coming forward about violations. Adequate funding for government enforcement agencies can significantly improve compliance with workplace standards, as can requirements that ensure lead employers and franchisees are jointly responsible for violations. Yet violations in fast food are so widespread that far more is necessary to ensure that employers actually comply with required standards.

In contrast, strong workplace-based organizations can effectively monitor and police minimum standards and ensure that workers are able to come forward and assert their rights.⁴⁹ Indeed, strong unions and other worker organizations are essential for compliance with workplace laws. Unions help educate workers about their rights, draw public and government attention to violations, and make it safer and easier for workers to stand up to rule-breaking employers, as well as ensure adequate funding for government enforcement agencies.⁵⁰ Not surprisingly, research in the United States and around the world finds that union worksites are safer and that unionized workers are less likely to have their legal rights violated.⁵¹

Well-designed sectoral councils can help workers participate in standard-setting and compliance and ensure that they receive their due.⁵²

Conclusion

A sectoral council would improve working conditions for hundreds of thousands of fast-food workers in California, help responsible businesses compete on a fair and level playing field, and prevent a race to the bottom that causes taxpayers to subsidize poverty-level jobs. This model is a good solution to the challenges facing California's fast-food industry, where workplace standards are low; violations of existing standards are frequent; and traditional means of coordination, standard-setting, and worker involvement are particularly difficult in light of a heavily franchised industry characterized by a few dominant brands but many small employers. A sectoral council could provide a way for workers and employers to discuss issues in the industry, set industrywide standards so that all workers receive similar compensation no matter how employers structure their enterprises, and create a meaningful avenue for workers and employers to influence and enforce standards.

Importantly, the council would help put into place some of the core recommendations of California's Future of Work Commission: a cross-section of prominent leaders from technology, labor, business, and education appointed by Gov. Gavin Newsom (D) to make recommendations for inclusive, long-term economic growth. Indeed, the commission's final report recommended that the state seek to "empower workers" and "harness the full capabilities and collaboration of all stakeholders" to improve job quality, reduce income inequality, and decrease economic disparities across race and gender⁵³—goals the sectoral council would help accomplish.

By moving forward with this model of stakeholder involvement and standard-setting in an industry that needs it, California can help show the way forward for other states and the country.

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Endnotes

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