



SKIMMED & SCAMMED

WAGE THEFT  
FROM CALIFORNIA'S  
FAST FOOD WORKERS



May 2022

## FOREWORD

I am proud to introduce this timely, well researched, and important study “Skimmed & Scammed: Wage Theft from California’s Fast Food Workers.” California leads the country with the highest number of fast-food workers in the nation according to the [U.S. Bureau of Labor Statistics](#). This critical report presents new data and findings that demonstrate the prevalence of wage theft in an industry dominated by low wage workers and people of color on whom wage theft has a disproportionate impact. [Saru Jayaraman](#), co-founder and co-director of the Restaurant Opportunities Center United correctly concludes that “the poorest workers in America are being stolen from the most.”

The 2022 California Fast-Food Wage Theft Worker Survey contained in this groundbreaking report finds that a shocking 85% of fast-food workers in California report experiencing wage theft. This eye-opening figure is disturbing in an industry dominated by global brands like McDonald’s, Burger King, and Jack in the Box. These brands incentivize wage theft by employing what Professor David Weil calls “fissuring,” placing intermediaries between themselves and workers through franchising, which allows the global brands to siphon off profits and evade liability. Because the global brands still exert significant control over the franchisees, fissuring creates intense pressure on even the well-intentioned franchisee that can only increase profits by cutting labor costs.



Fast food is an industry that can do better and must do better. The report correctly notes that California legislators are poised to address the key factors that exacerbate the crisis in the fast-food industry if they enact AB 257. [California’s Future of Work Commission recommended](#) that the state seek to “empower workers” and “harness the full capabilities and collaboration of all stakeholders” to improve working conditions. AB 257 will accomplish that goal by addressing workers’ need for a greater voice and power in an industry where workers currently fear retaliation if they speak up. AB 257 will create a new standards-setting body for the industry, the Fast-Food Sector Council, which brings together workers, franchise operators, franchisors, and regulators to address industry problems, give workers a voice, and require companies to share the cost of ensuring that fast food restaurants do not violate labor laws. This critical report underscores the need for California to enact AB 257 and lead the way for other states and for the entire country.

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## EXECUTIVE SUMMARY

California's fast-food industry is one of the largest, fastest growing private sector employers in the state. The global fast-food corporations that operate in California make billions of dollars in profits, yet fast-food workers rank among California's lowest paid large occupational groups.<sup>1</sup> Over the course of the pandemic, fast-food workers emerged as an essential workforce, helping to feed communities and fuel local economies across the state. As our new survey finds, however, these same workers – employed by some of the world's largest, most profitable brands – face rampant wage theft by their employers.

The 2022 California Fast-Food Wage Theft Worker Survey canvassed a total of 410 fast-food workers from 259 fast-food locations in 86 cities in California. The surveys, offered in English and Spanish, were conducted by bilingual outreach workers in the field between January 2022 and March 2022. The workers surveyed represent 44 different brands, including McDonald's, Jack in the Box, Carl's Jr., Burger King, Subway, KFC and Taco Bell, as well as many smaller brands.<sup>2</sup>

The survey finds that the vast majority of fast-food workers have experienced wage theft. Specifically:

- 85 percent of workers surveyed have experienced at least one form of wage theft.
- 57 percent of workers have experienced multiple forms of wage theft.
- Nearly one-third of workers have been retaliated against for asking to be paid properly, taking a sick day, or asking to be paid for a sick day.

Given a fast-food workforce in California of more than half a million people, these findings suggest that some 425,000 Californians are not being paid what they are owed while working behind the counters of major fast-food companies.<sup>3</sup> Wage theft in fast-food has a particularly damaging effect on the Black, brown and immigrant communities overwhelmingly represented in the industry's workforce, as well as on women, who make up two-thirds of California fast-food workers.<sup>4</sup>



The prevalence of wage theft in fast food is especially remarkable given the influence that well-resourced, global corporations have over the industry. Under the current system, corporate fast-food giants dominate the industry, set most of its terms, and receive most of the profits, at the expense of frontline workers as well as the small business franchisees who operate their stores.<sup>5</sup> These companies can afford to do better.

For years, California fast-food workers have been organizing to win reforms in this low-wage, high-violation industry, but several systemic factors have allowed issues like wage theft to persist.

**Fast-food workers lack power in their industry and have little effective recourse for unpaid wages and other workplace violations.** Often, when workers speak out about issues they are facing in their stores, they risk reprisal in the form of cut hours, threats and even termination. As noted above, nearly one-third of survey respondents reported that they have been retaliated against for wage theft-related issues. Retaliation in other areas has also been well documented.<sup>6</sup>

**Global fast-food corporations have designed the franchise system to shield themselves from liability for the labor violations that happen under the umbrella of their brands.** In the franchise system, a small business – the franchisee – pays royalties and other fees to a corporate franchisor and is contractually bound to the terms that franchisor sets. In these contracts, fast-food corporations dictate nearly every aspect of a restaurant’s operations while exempting themselves from liability for employment matters.<sup>7</sup> This leaves franchisees to shoulder the burden of high operating costs, with limited independence to set store policies and sole liability for compliance with labor law. In the face of slim profit margins, many franchise operators feel forced to cut corners, often at the expense of worker pay or health and safety.<sup>8</sup>

This power imbalance hurts local economies as well as California taxpayers, who foot a bill of \$4 billion annually for the portion of social safety net programs that subsidize the fast-food industry’s workers.<sup>9</sup>

In this report, we present the findings of the 2022 California Fast-Food Wage Theft Worker Survey along with additional analysis drawn from wage theft complaints filed with the Office of the Labor Commissioner by fast-food workers, statewide wage theft data obtained through that agency, and recent wage theft-related lawsuits in California. The report concludes with policy recommendations to address the structural factors that allow for wage theft in the fast-food industry.

Given the systemic nature of the problem, enforcement alone cannot overcome the wage theft facing California’s fast-food workers; even with a dedicated staff at the California Labor Commissioner’s Division of Labor Standards Enforcement. Policy changes are also needed to ensure that fast-food workers have a voice in their industry and that corporate brands supply their local franchise operators with the resources and processes to comply with workplace laws.

## I. INTRODUCTION: “WE DON’T GET PAID FOR OUR WORK”

Wage theft is a form of fraud. It occurs when an employer fails to pay employees what they are owed under the law.<sup>10</sup> Examples of wage theft include unpaid work, minimum wage and overtime violations, paycheck problems, rest and meal breaks issues, and paid sick leave violations. Wage theft is the costliest crime in the country, with \$15 billion in wages lost per year, stolen from among the most vulnerable workers in society.<sup>11</sup> That total is higher than losses from car thefts, burglaries and all other larcenies combined.

Workers at all income levels can experience forms of wage theft, but it most frequently occurs in low-wage service industries like fast food, where a disproportionate number of workers are people of color, women and immigrants.<sup>12</sup> A Center for Public Integrity analysis of U.S. Labor Department data found that industries with higher percentages of immigrant workers had higher rates of wage theft. In California, industries with large immigrant worker populations and high rates of wage theft include fast food, agriculture, domestic work, building construction, nursing homes, warehouses and car washes.<sup>13</sup> Wage theft in fast food is uniquely egregious given the influence of highly profitable corporations like McDonald’s in the industry. These global fast-food giants have ample resources to prevent the persistence of wage theft, yet they have failed to resolve the problem.

The vast majority of fast-food workers in California experience wage theft, according to the 2022 California Fast-Food Wage Theft Worker Survey. Conducted among 410 fast-food workers from 259 fast-food locations in 86 cities in California, the survey finds that 85 percent – approximately 425,000 Californians – have experienced at least one form of wage theft, and 57 percent have experienced multiple forms.

Interviews with workers by the Fight for \$15 and a Union, lawsuit settlements,<sup>14</sup> and data provided by the Division of Labor Standards Enforcement<sup>15</sup> show that it is not unusual for wage theft claims to reach tens of thousands of dollars. Of the 58 individual wage claims we helped workers file, 24 were over \$10,000.

This systemic loss in income aggravates the precarious economic reality that California’s fast-food workers and their families face. In California, one in six families with a fast-food income earner lives below the poverty line.<sup>16</sup> Fifty-four percent of these workers spend more than 30 percent of their income on rent.<sup>17</sup> A full quarter of these workers, furthermore, are the main earners in their family. These factors all disproportionately impact communities of color and women. Eighty percent of California’s fast-food workers are people of color and 60 percent are Latino. Sixty-eight percent are women.<sup>18</sup>

From October 2020 through March 2022, the Fight for \$15 and a Union supported workers at more than 30 fast-food restaurant locations to file wage theft complaints and wage claims with the Office of the Labor Commissioner. In the course of this work, many dozens of fast-food workers shared their experiences with wage theft during hours of in-depth interviews.

The experiences of Maria Bernal, a Jack in the Box worker in Folsom, are emblematic of those faced by many workers in the fast-food industry. She has experienced several forms of

wage theft resulting in negative impacts on her family life and economic situation, and when she and her coworkers spoke up and tried to exercise their rights, they faced threats and retaliation from their employer.

Bernal, a single mother of three who has worked at Jack in the Box for a decade, calculates that she was cheated out of more than \$150,000 over a nine-year period. After her husband was deported, it was up to Maria to support her kids on her Jack in the Box income. Maria reports that her employer regularly required her to work 14-hour shifts with no breaks, paying her for only eight hours thereby requiring her to work more than one third of her shift unpaid and off the clock to avoid paying for overtime hours worked. Quitting did not feel like an option. She could not afford to lose even one day's pay, nor did she think she could find better treatment elsewhere in the industry.

"Everyone has complained that they don't get paid for all their hours," she says. "I asked [the manager] why am I missing hours? Why aren't they paying overtime? But she did not answer. They would promise me that if I worked Christmas day, they would pay me double time, but they never did. This is what is happening to us in fast food – we don't get paid for our work."

Wage theft can have devastating effects on workers and their families. Maria Bernal has been evicted, has had her phone cut off, has turned to public assistance to eat, and has been hospitalized for exhaustion due to overwork. She says: "Jack in the Box did not just cheat me out of the money I earned, they stole time with my kids, holidays, birthdays, weekends, time when they were sick, and I couldn't be there. It was especially hard when my kids were sick and they forced me to work. I do everything so my kids don't have to struggle in life as I have. I don't want them to have to work so hard just to survive."



## II. SURVEY: 85 PERCENT OF CALIFORNIA FAST-FOOD WORKERS EXPERIENCE WAGE THEFT

The 2022 California Fast-food Wage Theft Worker Survey found that a vast majority of fast-food workers in California – 85 percent – have experienced some form of wage theft. Wage theft takes many different forms but generally falls into one of the following five categories: unpaid work, minimum wage and overtime violations, paycheck problems, rest and meal breaks issues, and paid sick leave violations. The survey asked 27 questions across these five categories. Most of those surveyed (85 percent) have experienced wage theft in at least one of these categories, 57 percent have experienced it in two or more categories, and 28 percent have experienced it in three or more.

% Respondents Who Have Experienced....	
Unpaid work violations	14%
Minimum wage or overtime violations	27%
Paycheck problems	31%
Rest break or meal break violations	53%
Paid sick leave violations	59%

The survey was conducted by bilingual outreach workers in the field between January 2022 and March 2022. It included a total of 410 fast-food workers at 259 fast-food locations in 86 cities in California.<sup>19</sup> Respondents represent 44 different brands, including McDonald's, Jack in the Box, Carl's Jr. Burger King, Subway, KFC and Taco Bell. Reflective of the state population, these fast-food locations span five major metropolitan areas in the state: San Diego, Los Angeles, Fresno, the Bay Area and Sacramento.

The results of the survey are consistent with previous surveys and show that very little has improved despite ongoing worker action and media attention to the problem.<sup>20</sup> For example, a 2014 survey of fast-food workers in multiple cities found that 89 percent of fast-food workers nationally and 81 percent of workers in Los Angeles had experienced wage theft.<sup>21</sup> A survey of fast-food workers in Los Angeles conducted in 2021 found that 63 percent had experienced wage theft.<sup>22</sup> Multiple surveys have also found that retaliation is a major problem within the industry, preventing workers from reporting wage theft and other violations to authorities or complaining about it to managers.<sup>23</sup>

### UNPAID WORK

In many instances, workers are simply forced to work for free. Fourteen percent of survey respondents report at least one of two possible unpaid work violations (being required to work before clocking in or after clocking out or having your time records altered to make it look like you were clocked out while you were working). Under state and federal labor law, hourly employees like fast-food workers are required to be paid for all the time that they work.

In complaints to the Office of the Labor Commissioner, workers have described several ways employers require them to work for free. Some methods include regularly requiring workers to work before clocking in or after clocking out, requiring them to work a shift without clocking in, and altering timekeeping records. In one wage theft complaint, a 16-year-old KFC worker, Tallon Ralston, describes being forced to work far more than allowed under California’s Child Labor Laws and at the same time being forced to work unpaid off the clock so that his employer could avoid paying for overtime hours worked. “I was frequently required to work 7 days per week, and on the 7th day I was required to work 10-14 hour shifts, unpaid; this happened about every-other-week for at least 6 months.”<sup>24</sup>

## MINIMUM WAGE AND OVERTIME VIOLATIONS

In other cases, workers are paid for all their hours but not at the rate that they are owed. Twenty-seven percent of respondents report having experienced at least one minimum wage or overtime violation. According to California law, all workers must be paid:

- at least minimum wage when working up to eight hours in one day or 40 hours in one week;
- time and a half for any hours worked beyond eight in one day or 40 in one week, or on the seventh consecutive day in a work week; and
- double time for any hours worked beyond 12 in one day, 48 in one week or eight on the seventh consecutive work day in one week.

Employers utilize a variety of methods to avoid paying overtime rates of pay. These include paying workers cash for off-the-clock work, having workers log in under different names so that overtime hours are not counted, spreading hours worked in one week across multiple weeks, and paying workers with multiple paychecks for work at two or more locations of the same owner.

## PAYCHECK PROBLEMS

More than 30 percent of respondents have struggled with some sort of paycheck problem. These include not being paid your final paycheck (the most common), not being paid what you were promised verbally, not being paid what you were promised when hired, not being paid on time, and having a paycheck bounce.

## LACK OF MEAL BREAKS AND REST BREAKS

Rest and meal break violations are among the more common forms of wage theft. These include being forced to work through rest breaks and meals breaks – or having them interrupted by work – without required compensation. Fifty-three percent of respondents reported at least one such violation, and most of these experienced more than one.

Wage theft complaints filed by fast-food workers with the Office of the Labor Commissioner show that this problem is not an occasional oversight, but a systemic problem. Workers report being asked regularly to clock out for breaks and continue working, and having managers change the time records when they do not clock out.

“



Before we went on strike on June 29, 2021, I used to miss my lunch break about twice a week. If we didn't punch out for our meal breaks, Janet, the manager, would tell us, “luego lo arreglo” – I will go fix it – which meant that she punched out for us so that we would not get the premium.

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– Leticia Reyes, a Jack in the Box employee in Sacramento<sup>25</sup>

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Workers at multiple fast-food locations filed wage theft complaints that point to severe understaffing as a factor preventing breaks. At some locations, workers describe being the only one working for hours at a time, making it physically impossible to take even a bathroom break.

“



From 2019 until 2021, I did not get any 10 minute breaks. During much of this time I worked alone and there was no one to cover me to take a break. It was also dangerous; in January 2021 I was assaulted at gunpoint while I was working alone.

”

– Berta Perez, a Subway employee in San Jose<sup>26</sup>

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## PAID SICK LEAVE VIOLATIONS

Paid sick leave violations are the most common form of wage theft, with 59 percent of respondents reporting problems in this area. In 2015, California enacted a modest paid sick leave law, requiring employers to provide three days paid sick leave each year, to be accrued and made available over time.<sup>27</sup> The survey shows that a large number of fast-food workers do not have access to even this minimal amount of sick pay because employers refuse to pay. More than a quarter of respondents – 28 percent – report not being allowed to use the sick time they have available, and 14 percent report having accrued and available sick leave disappear from their pay stubs without using it.

These abuses are especially concerning during the pandemic, when emergency sick leave policies were passed to contain the spread of the virus and were routinely ignored by fast-food employers.<sup>28</sup> Since March 2020, fast-food workers in California have largely been covered by state and federal COVID-19 extended paid sick leave requirements, beginning with the Federal CARES Act and a series supplemental paid sick leave requirements at the state level,

as well as the CalOSHA COVID-19 Emergency Temporary Standards and subsequent revisions. Nonetheless, a full half of survey respondents reported COVID-19-related paid sick leave violations.

This finding reflects those of other recent studies and reporting on the impact of COVID-19 in the fast-food industry, which contain countless stories of workers being denied the extended paid sick leave to which they were entitled, or even being denied unpaid sick leave, and being forced by employers to come to work with a confirmed COVID-19 diagnosis or COVID-19-like symptoms.<sup>29</sup> In the case of the fast-food industry, the efforts of state and federal legislators to protect workers through the pandemic did not have the desired effect.

## Sick Pay/Retaliation

**59% of fast food workers have experienced at least one sick pay violation, 43% of workers have experienced at least one form of retaliation.**

### **Seberiana Reymundo McDonald's employee in Saratoga**

*When I was recently diagnosed with liver cancer, I worried about how management would treat me because of the abuse and discrimination that I suffered when I was battled breast cancer while working at the same place.*



*They do not pay for sick days at this store. I missed one week of work in January and one week of work in February 2022 for procedures related to my liver cancer treatment, and I did not receive any sick pay, even though I was entitled to sick pay and had sick hours available. My manager would incorrectly tell me that I had no sick pay even though I knew I had the hours.*

*When I had breast cancer management treated me badly. They told me “people with cancer smell bad” and “you disgust me”. During breast cancer treatment and now with my liver cancer, they gave me work assignments that they knew were especially hard on me to punish me for needing sick days and accommodation. One of them sent me to work outside after I told them that chemotherapy made me sensitive to cold, and I cried when I was doing that work because it was so painful. And now this time, I told my manager that on doctor’s orders I can’t work in high heat while I am waiting on the liver transplant list, and they changed my schedule so that I had more time in the hottest part of the day. When I told her I cannot work when it is very hot, my manager told me “You are useless” which is mean and not true. I can work at many tasks, including working at the grill in the mornings when it is not too hot yet.*

In a wage theft complaint from a McDonald’s location in Saratoga, a worker reports having received no paid days off even during cancer treatment. Seberiana Reymundo knew she was entitled to some paid sick leave when she had cancer, but no available paid sick leave appeared on her pay stub and her manager told her she did not have any. Not only did she not get her legally mandated paid sick leave, she was also punished for taking unpaid time off.

## MULTIPLE EXPERIENCES WITH WAGE THEFT

Many workers have experienced wage theft in more than one of the five categories in the survey. The categories we used to measure types of wage theft are: Unpaid work, minimum wage and overtime violations, paycheck problems, rest and meal breaks, and paid sick leave violations. More than half of survey respondents reported experiencing wage theft in two or more of these categories, while more than a quarter of respondents experienced wage theft in three or more categories.

% of Respondents Who Have Experience Wage Theft in....	
At least 1 category	85%
2 or more categories	57%
3 or more categories	28%
4 or more categories	11%
All 5 categories	3%

The fact that most fast-food workers not only experience wage theft but experience multiple forms of it, indicates the degree to which these violations are not aberrations but prevailing business practices within the fast-food industry.

## RETALIATION

Our survey results also show significant retaliation by employers against workers, with 30 percent of respondents experiencing some form of retaliation related to wage theft. Retaliation can include the cutting of hours, days or weeks from an employee’s schedule or termination. Retaliation has the troubling and often toxic effect of quieting both the worker who experiences it and the coworkers who witness it. It demonstrates to workers throughout a work place that if they speak up, the same thing could happen to them. Retaliation in any area dampens workers’ willingness to speak up concerning violations across the board.

The survey includes three questions about wage theft retaliation, and nearly half of those who report experiencing retaliation have experienced all three types. Retaliation over sick pay is the most common, affecting a full quarter of respondents.

% of Respondents Who Have Experienced Retaliation for....	
Calling in sick or asking for sick pay	25%
Quarantining for COVID-19 or asking for COVID-19 quarantine pay	19%
Speaking up about not getting paid right	17%
At least one of the above	30%
Of Those Who Have Experienced Retaliation, % Who Experienced....	
One of the above types	43%
Two of the above types	10%
Three of the above types	48%

### III. KEY FACTORS DRIVING WAGE THEFT IN FAST FOOD

#### AN IMBALANCE OF POWER

Fast-food franchisors are some of the most profitable companies in America, and their business model allows them to realize these profits while avoiding responsibility for workers. This arrangement represents a fundamental power imbalance within the fast-food industry, weighted in favor of corporate brands, that marginalizes workers as well as franchise owners.

The franchise business model concentrates both power and profit with the global corporate brands, creating what has been described as a “fissured” workplace.<sup>30</sup> Corporate brands impose on franchisees franchise agreements that create barriers to compliance with labor standards by requiring “vertical constraints,” a myriad of detailed and costly mandates governing nearly every area of those franchisees’ operations outside of labor, from prices to suppliers to hours to production methods.<sup>31</sup> They exclude labor mandates so as to avoid legal responsibility for labor violations. In the franchise structure, franchisees effectively function as subsidiaries, but without the legal liability of ownership or risk of antitrust enforcement. The result is that labor costs are the largest costs over which franchisees have real control, and controlling these costs becomes the principal way they can see a profit – creating a direct incentive for wage theft. While the franchise agreement is the tool of the franchisor to ensure profits flow from the restaurants to the corporate brands, wage theft and retaliation are the tools of the franchisee to achieve some level of financial gain.<sup>32</sup>

Corporate fast-food brands also use the franchise model as a tool to concentrate power in the market. Research on industry structure shows that ownership in the fast-food industry is more concentrated than in other low-wage industries when parent companies are taken into account.<sup>33</sup> The top 20 fast-food brands in the U.S. account for 81 percent of all fast-food restaurants in the country and 83 percent of sales. McDonald’s and Subway alone account for about 23 percent of fast-food locations.

So long as regulations remain largely unenforced, franchisors are able to have it both ways: holding all of the power and none of the responsibility, to the detriment of workers as well as franchisees. When they are criticized over poor working conditions, franchisors like McDonald's point the finger at their franchisees, claiming to have no control over their operations, when in fact, having created the system by which their franchisees must abide, they are directly responsible for perpetuating these conditions.

In the current environment, fast-food companies are so accustomed to ignoring labor regulations that in some cases they don't even bother to hide it. In one complaint filed in October 2021, workers report an employer posting a sign on the wall reading "No COVID Pay" at the height of the pandemic in November 2020.<sup>34</sup> This was after state and federal legislation had been passed requiring employers to pay for up to two weeks of sick leave for workers with COVID-19 or COVID-19 symptoms.

### "Fixing" Time Records

14% of fast food workers have experienced at least one problem with unpaid work, and 27% of workers have reported experiencing at least one minimum wage or overtime violation. The numbers are likely higher, given how many workers don't realize it is happening.

#### **Eduardo Sanchez-Mendoza** **McDonald's employee in Ontario**

*We are understaffed and frequently deal with orders piling up from the drive thru and DoorDash. Meal and rest breaks are impossible when it's this busy. Instead of paying us for those missed breaks, management goes into the timekeeping system and changes the time records to make it look like we took breaks that we weren't able to take.*



*Additionally, the time machines do not properly log overtime on certain shifts. Management refuses to correct this despite multiple complaints from me and my co-workers. When I complained, the only solution management offered is to cut my hours during the affected shift. This is unfair retaliation for asking the company to follow the law.*

*Why are they able to "fix" the time machine in one direction, where it takes money away from us, but not the other direction where fixing it would give us what we are owed?"*

## FAST-FOOD CORPORATIONS, CEOS PROFIT FROM STOLEN WAGES

Many fast-food workers suffered economically during the height of the COVID-19 pandemic, enduring layoffs and schedule cuts due to reduced staffing by companies. In addition to these hardships, our survey shows that wage theft prevented many of them from being paid for all their work and from accessing COVID-19 supplemental paid sick leave. At the same time, fast-food corporations made it through the pandemic better than other segments of the economy and, in most cases, have already exceeded pre-pandemic profit levels.<sup>35</sup>

Moving forward, the fast-food segment of the restaurant industry is also expected to grow at a faster rate than the independent restaurant segment, which struggled more during the pandemic. The fast-food segment is expected to grow by 7.1 percent in 2022, faster than the economy overall,<sup>36</sup> and an accelerated pace of growth when compared to the average annualized market growth rate over the last five years of 2.9 percent.<sup>37</sup> The full-service restaurant segment, which contains most of the independent, non-chain businesses in the industry only grew by 4.2 percent in 2022.<sup>38</sup>

There has also been accelerated growth in fast-food employment. Annual employment growth in fast food was 2.4 percent over the past five years and is expected to be 5.6 percent in 2022.<sup>39</sup>

Most fast-food restaurants remained open during the pandemic, including 99 percent of McDonald's restaurants, with features that specifically drove pandemic traffic like drive-through windows, affordable menus, and established delivery service.<sup>65</sup> In addition, a last-minute change to the Paycheck Protection Program allowed each franchised restaurant to apply as a stand-alone business when calculating the eligibility cap placed on number of employees. As a result, billions of dollars in pandemic aid meant for small businesses flowed to fast-food restaurants through that program.<sup>40</sup> Maria Bernal's employer, for example, received at least \$39 million in pandemic aid intended to help employees<sup>41</sup> – at the same time as he was accused of stealing wages from his employees at multiple Jack in the Box locations.<sup>42</sup>



**I asked my supervisor four different times if I was going to get paid for the work days I missed because of COVID. He never answered me, and I never got paid.**

**– Veronica Gonzalez, Taco Bell employee in Alameda<sup>43</sup>**





I was notified by a contact tracer on December 19 that I had to quarantine because someone in my household tested positive for COVID-19. Upon my return to work my regular weekly schedule was cut in retaliation, there was a 66 percent cut in my regularly-scheduled hours



– America Lopez, McDonald’s employee in Foster City.<sup>44</sup>

The table below details the growth in profit seen by the top publicly traded fast-food brands in 2019, before the pandemic, and in the pandemic downturn through 2021. These numbers strongly suggest that fast-food corporations have the resources to fix the problem of wage theft.

**Top Franchise Fast-food Brands Revenue and Profits, 2021 Unless Otherwise Noted**

Company	Revenue	Profit (Operating Income)	Growth in Profit Since 2020	Growth in Profit Since 2019
McDonald’s Corp.	\$23.2 billion	\$9.9 billion	37%	10%
Yum Brands (KFC, Pizza Hut, Taco Bell, The Habit Burger Grill)	\$6.6 billion	\$2.1 billion	24%	11%
Restaurant Brands International Inc. (Burger King, Popeyes, Tim Hortons)	\$5.7 billion	\$1.9 billion	21%	-5%
Domino’s Pizza	\$4.4 billion	\$780 million	8%	24%
Chick-Fil-A*	\$4.3 billion	\$716 million	N/A	11%
Wendy’s	\$1.5 billion	\$333 million	17%	20%
Jack in the Box (year ending October 31, 2021)	\$1.1 billion	\$280 million	58%	38%
Subway	\$689 million**	Private	Private	Private

Source: Seeking Alpha, QSR Magazine

\* Chick-Fil-A is a private company, so available financial data is limited. The company has released data for 2020, but not for 2021.<sup>45</sup> The growth in profit is from 2019 to 2020; totals for 2021 are expected to be higher.

\*\* This total is for 2020. The company is private but reported 2020 revenue and reports that sales are strong in 2021.<sup>46</sup>

The CEOs of fast-food corporations are also reaping large benefits from this system. The table below tracks the ratio of CEO pay against the pay of the company’s median employee at top publicly-traded fast-food corporations.

## 2021 CEO to Median Employee Pay Ratio

Corporation	CEO	Total Compensation in 2021	Median Worker Pay in 2021	Ratio of CEO pay to median worker pay
McDonald's	Christopher Kempczinski	\$20,028,132	\$8,897	2,251:1
Yum Brands	David Gibbs	\$14,631,451	\$11,377	1,286:1
Wendy's	Todd Penegor	\$9,669,733	\$13,757	703:1
Jack in the Box	Darin Harris	\$6,031,777	\$16,064	375:1
Domino's Pizza	Richard Allison	\$6,295,230	\$22,076	285:1

Source: Company proxy statements

## IV. RECENT ENFORCEMENT ACTIVITY AND CHALLENGES

The current structure of the fast-food industry presents challenges to enforcing California's labor laws and documenting wage theft. If regulators were able to engage with well-resourced parent companies to address wage compliance problems, the situation could be different. As it stands, workers have to wait years for an initial hearing given the large number of defendants the Division of Labor Standards Enforcement must engage with. And when a judgment by a state agency or a settlement in court finally does come down, it is rare that workers are ever paid what they are owed.<sup>47</sup> This leaves workers feeling hopeless while emboldening employers who commit wage theft by removing the threat of repercussions.

As a result, workers have little formal recourse to hold their employers accountable for wage theft. The two main avenues available to workers are the Division of Labor Standards Enforcement wage claim process and the courts. Both of these institutions have limitations that hinder their effectiveness, and neither is designed to address the large scale and extremely widespread nature of wage theft in the fast-food industry. Also, both present significant barriers for fast-food workers; who may not speak English, may lack computer and email access, may lack the time to follow through with a lengthy and labor-intensive investigation process, may be wary of government authorities, or may fear retaliation from employers.

### THE WAGE CLAIM PROCESS

An investigation by *KQED* in March of 2022 found that workers often wait years for an initial hearing with the Office of the Labor Commissioner in response to wage claims.<sup>48</sup> In many cases, this wait time effectively negates the enforcement action. These delays have only worsened as a result of the pandemic. In 2015, California workers waited 220 days on average for a hearing. That figure had nearly doubled by 2019 to 417 days and jumped again to an estimated 812 days as of February 2022. What's more, there is a large gap between the back wages and penalties assessed through the enforcement process and the amount workers are able to collect. Over the last 10 years, despite dedication by the staff of the Office of the Labor Commissioner, workers have collected less than 11 percent of the back wages and penalties due.<sup>49</sup>

The Labor Commissioner’s Office employs 500 people and has recently launched a new campaign to reach more Californians.<sup>50</sup> However, the nature of the franchise model makes it impossible for regulators from the Division of Labor Standards Enforcement, as well as other agencies such as the Department of Fair Employment and Housing, the Department of Public Health, and the California Occupational Safety and Health Administration, to adequately address many of the problems in the fast-food industry. These include wage theft as well as pandemic safety, sexual harassment and workplace violence.<sup>51</sup> When problems like these are endemic to a business model, as they are in fast food, there is no amount of regulation activity that can stem the flow of violations. Complaints are bound to overwhelm overburdened regulators.

Despite these challenges and fear of retaliation, fast-food workers with the Fight for \$15 and a Union have filed more than two dozen wage theft complaints with the Office of the Labor Commissioner since October 2020. Hundreds more wage claims have been filed in recent years from other workers in the fast-food industry.<sup>52</sup> Still, these wage theft claims represent only a small fraction of the actual wage theft in the industry. A recent data brief prepared for the Los Angeles County Department of Consumer and Business Affairs estimates that in the food service industry, there are 90 minimum wage violations for every wage complaint filed.<sup>53</sup>

## THE COURTS

An analysis of court records in California reveals dozens of wage theft-related class action and Private Attorneys General Act (PAGA) lawsuits filed against fast food entities. These are lawsuits in which employees file on behalf of themselves and other similarly situated employees to correct issues that affect them all. The volume of class action cases being filed against fast food entities suggests a systemic problem. A limited search of seven major fast-food brands in California’s largest counties has identified 33 of these types of cases filed since 2015. Of these 33 lawsuits, 21 are active as of March 2022 and 12 have been settled. Given that cases are often filed against the franchisee and not the brand, our findings are likely only a portion of what has been filed.

### Causes of Action in 33 California Fast-food Wage Theft Class Action and PAGA Cases Since 2015

	Percent of Cases
Minimum wage violations	61%
Improper pay stubs	79%
Overtime violations	85%
Meal and rest break violations	91%

Source: California county courts in select counties (Alameda, Contra Costa, Fresno, Los Angeles, Monterey, Orange, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara, Sonoma and Stanislaus)



The consistency of the language used by lawyers when filing class action lawsuits also suggests a systemic problem. For example, note the unvarying nature of the allegations in three separate class action or PAGA lawsuits filed against Maria Bernal's employer:

- 2017: "The claims of this lawsuit spring from a pattern of employer misconduct and wrongdoing that is a characteristic of the labor system utilized by Defendants, where unpaid and improperly paid labor, as alleged herein, is a common business practice."<sup>54</sup>
- 2018: "[The employer] built this franchise empire by having Defendants ... intentionally, systematically and continuously steal wages rightfully due to Plaintiff, and other similarly situated employees, working at the Restaurant, and the other franchises owned by the Defendants."<sup>55</sup>
- 2022: "Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees."<sup>56</sup>

The large number of class action and PAGA lawsuits, however, does not seem to serve as a deterrent to employers, as wage theft remains widespread.

## CHALLENGES DOCUMENTING WAGE THEFT

The ability of employers to hide wage theft from workers and frequent retaliation by employers against workers who speak up are two reasons that the incidence of wage theft could be higher than reported. Workers often don't realize that they are not getting paid correctly.

Many workers do not even know they are entitled to paid sick leave, rest breaks and meal breaks. In a wage theft complaint filed against Subway in San Jose, Maria Yolanda Torres describes, "During the first two years that I worked here, I went to work sick because I didn't know that I could get paid if I stayed home to recuperate. If I had a doctor appointment, I would ask for the day off, but I didn't know that I could use sick pay for that. I worked sick in March and April 2021 when I had COVID vaccine side effects – including chills, body aches and extreme fatigue – because I didn't know about COVID vaccine pay."<sup>57</sup>

In addition, workers may not notice that timekeeping records are being altered, or they may not realize how often they are being asked to do one or two more tasks after clocking out. One common complaint in class action lawsuits filed by fast-food workers involves the issuance of improper pay stubs. Employers sometimes hide the details of a worker's pay breakdown, making it all but impossible to know exactly why a paycheck seems lower than expected. Some workers describe not being able to access pay stubs at all. Perla Hernandez, who works at Burger King in Campbell, describes, "I don't know if or when I am getting paid correctly because I do not get regular pay stubs. I always punch in and out on the time clock, but the true hours that I worked did not appear reflected in my paycheck."<sup>58</sup> Often, when violations become commonplace, workers come to accept it as the way things are.

Maria Bernal explains what it felt like to notice something was wrong with her check and realize there was little she could do about it this way: "When I was working overtime I was counting on that money. I expected to have enough to pay my bills. But when I saw my check, all the hours weren't there. It made me want to cry."

## RETALIATION

Another ever present challenge to enforcement is retaliation by employers against workers who exercise their rights. In the 2022 California Fast Food Wage Theft Survey, 30 percent of respondents report experiencing at least one type of retaliation in relation to wage theft issues. Retaliation makes workers understandably afraid of talking to anyone about working conditions. Fast-food workers already face multiple barriers to engaging with authorities, such as fear, language, immigration status and the time constraints of working multiple jobs. Retaliation further exacerbates this lack of access to justice. It also deters other workers from exercising their rights.

By the summer of 2021, Maria Bernal and her coworkers were fed up and began planning to do something about the wage theft they faced on the job. When managers heard that this was underway, however, they threatened to call U.S. Immigration and Customs Enforcement (ICE) if the workers took action.<sup>59</sup> An atmosphere of threats and intimidation can lead workers to believe – with reason – that it is dangerous to advocate for themselves. This fear of retaliation among workers directly exacerbates the wage theft crisis.

## VI. WAGE THEFT FUELS CYCLE OF POVERTY FOR COMMUNITIES OF COLOR, IMMIGRANTS AND WOMEN

Because the demographics of California’s fast-food workforce are highly concentrated with respect to race and gender, the burden of wage theft in this industry falls disproportionately on low-income communities of color, who make up 80 percent of fast-food workers, and women, who make up two thirds. For these populations, income stolen by employers contributes directly to poverty. According to a recent study from UCLA and UC Berkeley, 28 percent of California fast-food workers live below 150 percent of the federal poverty level, a common measurement for public benefits eligibility, as compared with only 12 percent of all California workers.<sup>60</sup> Fifty-four percent of fast-food workers spend more than 30 percent of their income on rent, as compared with 42 percent of all workers.

Combined with rising housing costs and inflation, wage theft aggravates the already difficult economic situation faced by California fast-food workers. Between 2017 and 2019, 36 percent of California fast-food workers were utilizing Medi-Cal for health insurance, as compared with 14 percent of all workers.<sup>61</sup> Thirteen percent had no health insurance at all. With low wages and a general lack of employer-provided benefits, two-thirds of California’s half million fast-food workers rely on safety net programs at an annual public cost, in California, of \$4 billion per year.

Solving the problem of wage theft in fast food would lift up a large and growing workforce of low-income women and communities of color that already struggle to meet basic needs.

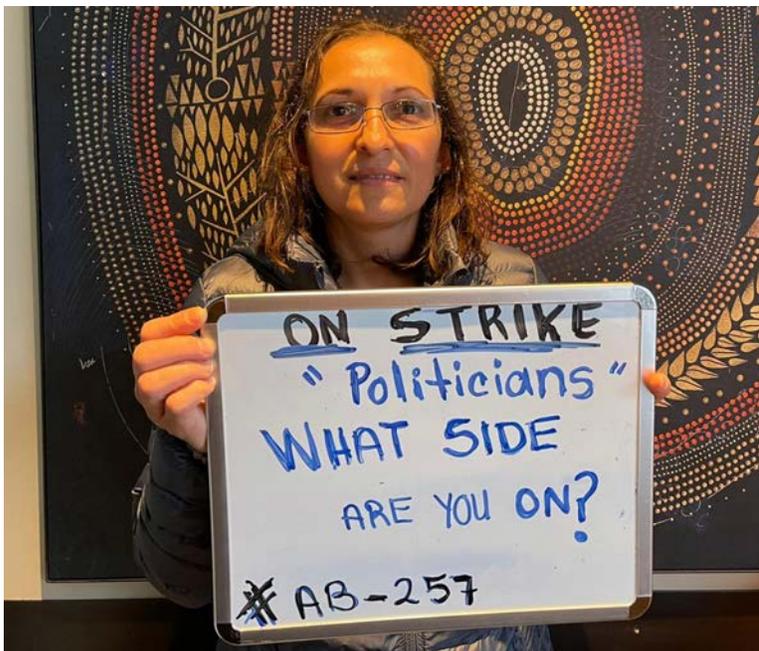
## VII. POLICY SOLUTIONS

California has led the nation in progressive labor policies such as the \$15 minimum wage, strong overtime pay requirements, state mandated paid sick leave and COVID-19-related paid leave. It also has a strong track record of passing innovative, industry-specific legislation that has benefitted low-wage workers and workers of color across the state. The 2022 California Fast-Food Wage Theft Worker Survey shows that fast-food employers are frequently committing wage theft in defiance of these policies, and that additional policy solutions are needed.

Governor Newsom declared that after the pandemic, “We’re not going back to normal ... normal accepts inequity.”<sup>62</sup> Rodrigo Dominguez-Villegas, research director at the UCLA Latino Policy and Politics Initiative, put it this way in a recent report on the inequities of the 2020 federal stimulus program: “In order to emerge from the pandemic and into the recovery without greater inequality, we need action now to uplift the people who need help the most.”<sup>63</sup>

Currently, the state legislature is considering AB-257, the FAST Recovery Act. The bill creates a new standards-setting body for the industry, the Fast Food Sector Council, which brings together workers, local franchise operators, franchisors and regulators to identify and address industry problems, affording a much-needed voice to workers. And it requires parent companies like McDonald’s to share the cost and responsibility for ensuring their restaurants have high standards of labor compliance.

The evidence in this report shows that when employers systematically refuse to comply with labor law and workers are not safe to speak up, the state’s regulatory system has no way of keeping up with the true extent of the violations. The dispersed nature of the fast-food industry under the franchise model aggravates the problem by pinning liability on local operators while allowing massive, well-resourced corporations to avoid responsibility.



With AB 257, California has the opportunity to take bold action to increase protections and power for some of the lowest paid, most vulnerable and most exploited workers who fuel the world’s fifth largest economy. Given systemic, well-documented issues facing fast-food workers like wage theft, poverty, violence<sup>64</sup>, sexual harassment<sup>65</sup> and discrimination, decisive solutions are needed for the state’s half million fast-food workers.

## The Law

*By California law, employers must do all of the following:<sup>66</sup>*

- *Pay at least the minimum wage (\$14/hour for employers with 25 employees or less, \$15/hour for employers with 26 employees or more).*
- *Pay overtime equal to 1.5 times the regular rate of pay for more than eight hours in one day or more than 40 hours in one week.*
- *Pay double time for all hours over 12 in one day or over eight on the seventh day or work in a workweek.*
- *Provide a paid 10-minute rest break for every four hours of work.*
- *Provide an uninterrupted, unpaid meal break of at least 30 minutes after no more than five hours of work (or two meal breaks when working more than 12 hours a day).*
- *Pay employees at least twice a month on designated, regular paydays. Employer must provide a wage stub or statement with the following information: pay period dates; gross wages earned; total hours worked; breakdown of hourly rates and hours worked at each rate; piece rate information if applicable; all deductions; net wages; name and ID number of employee; and legal name and address of employer.*
- *Pay employees the wages they were promised, whether the promise was oral or in writing.*
- *Provide at least 24 hours or three days of paid sick leave for each eligible employee to use per year. (Includes part-time and temporary employees. Accrual begins on the first day of employment, though employee must complete a 90-day employment period before taking any sick leave.)*
- *Allow eligible employees to use accrued paid sick leave.*



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