



Not So FAST:

Analyzing Labor Law Compliance at California Fast Food Restaurants

Compiled from California Department of Industrial Relations data

Executive Summary

A.B. 257, the “Fast Food Accountability and Standards (FAST) Recovery Act,” would create a new regulatory scheme for California’s fast food restaurant industry (“limited-service restaurant” or LSR, to use Census terminology). This novel arrangement is ostensibly necessary because the limited-service restaurant industry is allegedly more prone to labor law violations than other industries.

Yet a statement comparing working conditions in this industry to conditions in other industries was not included in the findings and declarations of the bill. In fact, no credible data have been presented to justify why the industry should be singled out for special regulatory attention and oversight.¹

This report reviews the largest-possible scope of alleged wage and hour violations as recorded by the California Department of Industrial Relations (DIR), which operates under one of the most complex, extensive labor codes in the nation. Data on wage claims by industry recorded by the state Division of Labor Standards Enforcement (DLSE) are reviewed to compare the LSR industry to all others in the state.² We also present DIR data covering more than 7,600 lawsuit outcomes under the Private Attorneys General Act (PAGA), California’s unique law providing for employees to directly sue employers for labor law violations.

OUR FINDINGS INCLUDE:

- Limited-service restaurants account for **only 1.6 percent annually of total average wage claims** filed with the state Division of Labor Standards Enforcement (DLSE) for the period 2017 through 2022. (This is less than the industry’s 3.2 percent share of the overall employment in California.) The percentage of wage claims from LSR was steady over the years studied, exhibiting no notable pandemic-era spike.
 - Using an adjusted data set that includes restaurant locations potentially miscategorized by the state, limited-service restaurants still average only 2.3 percent of all wage claims.

1 An unscientific convenience survey of 400 limited-service restaurant employees, conducted by SEIU organizers, claims that 85 percent of the state’s limited-service workforce has been a victim of wage theft.

2 As used here, “wage claim” means a claim alleging a labor law violation.

- 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**. Across all years of data analyzed, there was roughly one wage claim per one-thousand private sector employees in limited service—one of the lowest per-employee industry rates.
- Similarly, in lawsuits by employees alleging wage and hour violations under California’s PAGA law from FY13-14 to July FY20-21, **the limited-service restaurant industry accounts for just 1.5 percent of total lawsuits** in all industries where awards were granted to employees, and only 1.8 percent of all dollars awarded to employees.

California has created numerous tools for employees to easily seek compensation for alleged violations of labor laws. The data suggest that employees are actively and frequently availing themselves of these tools. The state should focus on fixing administrative delays and backlogs rather than pursue the potentially harmful, unwieldy, and costly approach proposed in the FAST Recovery Act.

Introduction

To analyze the scope of wage claims industry-wide in California, the analysis conducted in this report uses two state data sources to identify the true extent of wage claims and potential labor law violations they represent.

The first analysis reviews wage claims filed with DLSE from 2017 through most of June 2022 to understand how the incidence of these claims varies by industry.³

The second analysis uses data obtained from a public records request to the Labor and Workforce Development Agency (LWDA) on PAGA lawsuits filed to view the comparison of industries through this alternate lens. Labor advocates have boasted of the relative ease with which workers can bring an action under PAGA, and there is a strong incentive for plaintiffs' attorneys to bring these lawsuits.⁴ The PAGA data therefore present a compelling means of determining how different industries compare in terms of labor law violations.

Refer to the Methodology section for more detail on the data used in this analysis. Results from each data set are presented in the following sections.

3 California Department of Industrial Relations - Division of Labor Standard Enforcement: <https://www.dir.ca.gov/dlse/dlseWagesandHours.html>

4 The Center for Popular Democracy: https://www.populardemocracy.org/sites/default/files/PAGA%20Report_WEB.pdf

Section 1: Wage Claims filed at the Division of Labor Standards Enforcement

DLSE evaluates wage claims pursuant to California Labor Code sections 96 and 98, and records claims in an online searchable database. To understand the rate of wage claims California experiences across industries, we analyzed the last five full years of available data (2017 through 2021) and data for 2022 through June 22.

Total wage claims for all California industries filed during this period have varied but steadily declined since 2019. Presented in Figure 1, wage claims in the limited-service restaurant (LSR) industry make up a minimal fraction of total claims each year, averaging 1.6 percent of all claims annually. The LSR share of total industry claims has remained steady every year throughout this period – the LSR industry’s percentage of total industry claims has not increased meaningfully in recent years. See all claims counts by industry in Appendix Table A2.

The LSR category represents 3.2 percent of the overall employment in California and 1.8 percent of California establishments, meaning wage claims filed with DLSE represent an even smaller fraction than overall employment and establishments in the state (see Appendix Table A1).

When adding in recognizable fast-food establishments that may have been miscategorized outside of the LSR category, the proportion of LSR establishments increases slightly but remains low and relatively steady.⁵ With these additional miscategorized establishments added to the count of claims attributed to LSR establishments, the LSR average is 2.3 percent of all wage claims annually, as seen in Figure 2.

5 Refer to Methodology for details on the criteria and process for identifying and counting “miscategorized” fast-food establishments.

Figure 1. Total Wage Claims Filed in California compared with Limited-Service Restaurant Industry, 2017-2022.

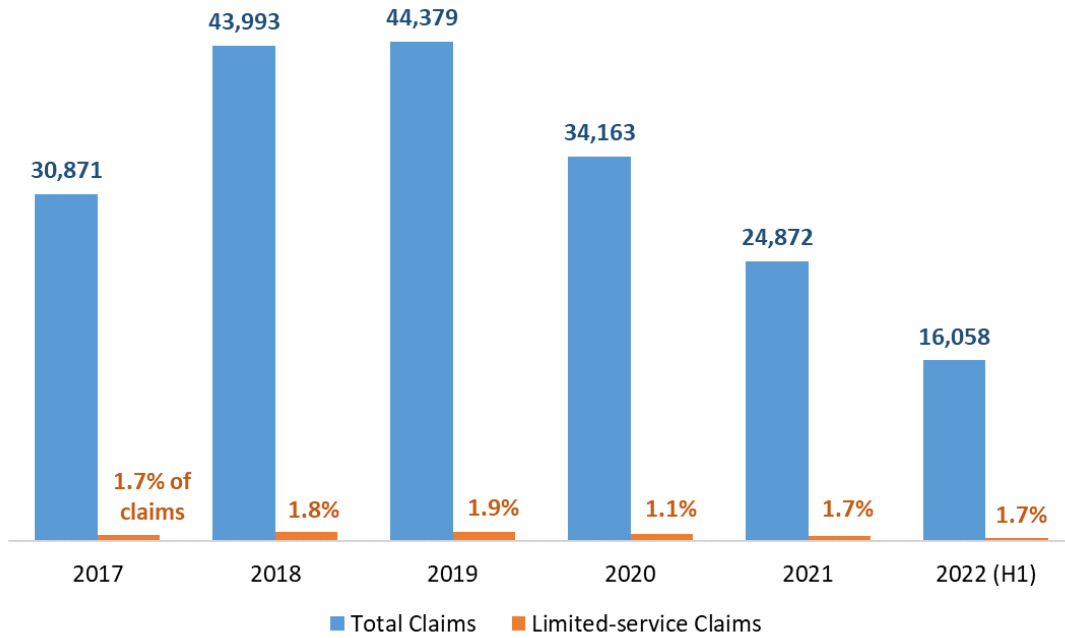
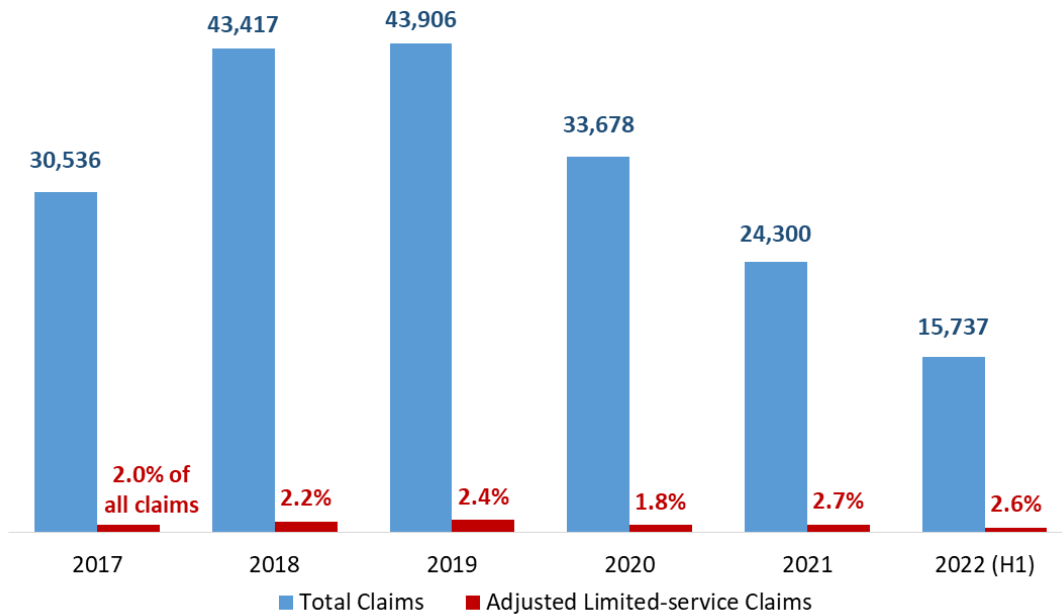


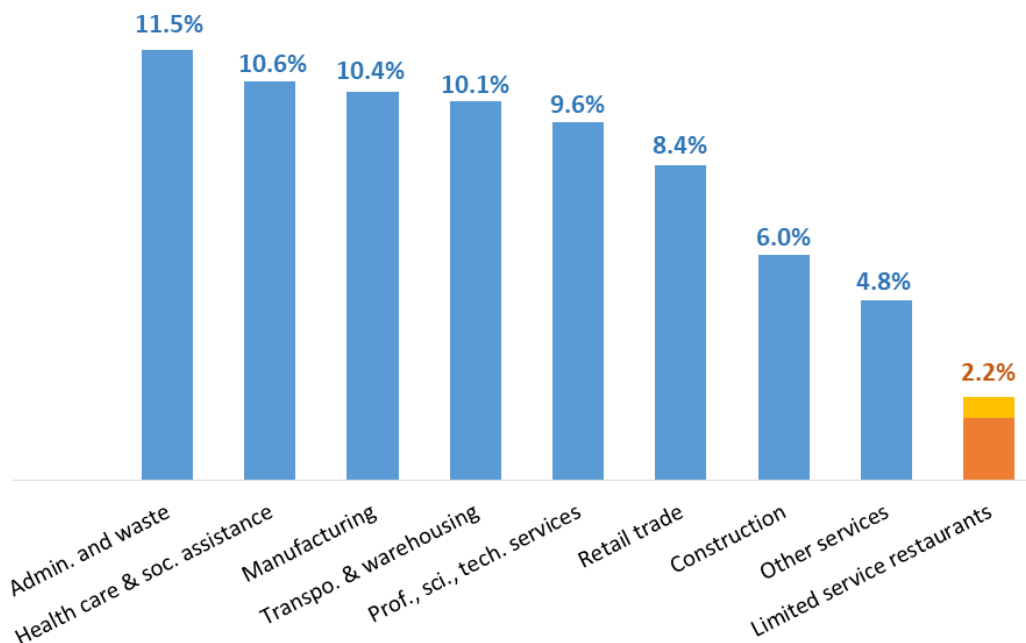
Figure 2. Total Wage Claims Filed in California compared with Adjusted LSR Industry, 2017-2022.



To understand how limited-service restaurants compare to other industries in California, Figure 3 presents data on wage claims by industry. Viewing a selection of major industries shows the limited-service restaurant category, even when adjusted to include possibly miscategorized fast-food establishments, represents a far smaller proportion of total wage claims than many other industries.

The adjusted limited-service category included 2.2 percent of all wage claims for the full period analyzed in this report, compared with other industries which accounted for much larger portions of employee wage claims, including “Administrative and waste management” (11.5 percent of all wage claims), “Health care and social assistance” (10.6 percent), “Manufacturing” (10.4 percent), “Transportation and warehousing” (10.1 percent), “Retail trade” (8.4 percent), and “Construction” (6.0 percent). View the full list of claims by industry in Appendix Table A3.

Figure 3. Percent of Total Wage Claims by Industry as a percent of total wage claims, 2017-2022.

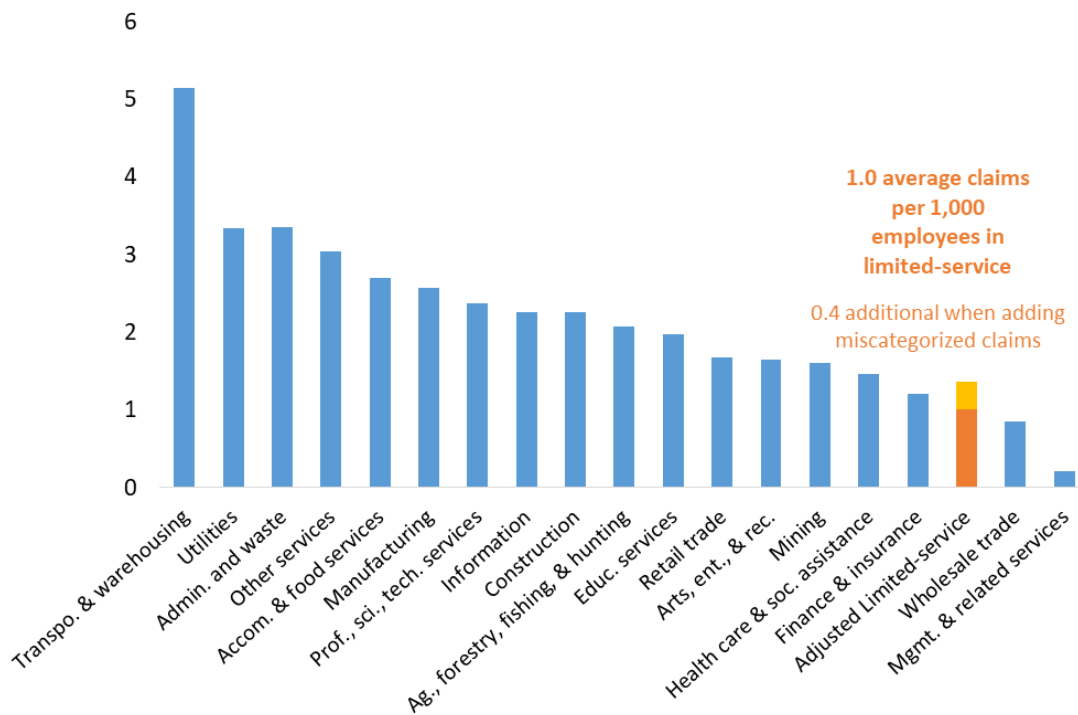


The overall number of individual industry wage claims across California puts limited-service restaurants at the low end of the range. Because these industry categories have varying employment numbers, controlling the rate of claims by private employment in the following analysis shows a more complete picture of wage claims across California’s industries.

Standardizing the rates of wage claims per 1,000 employees for all industries in the previous analysis provides further evidence that limited-service restaurant employers have one of the lowest rates of wage claims.

As shown in Figure 4, LSR accounted for an annual average of 1.0 wage claims per 1,000 employees from 2017 through 2022. When the additional likely-miscategorized LSR claims were added in, this ratio increased slightly to 1.4 claims per 1,000 employees. View the full list of sectors in Appendix Table A4.

Figure 4. Average Wage Claims Per 1,000 Employees, 2017-2022.



Section 2: Lawsuits Filed Under PAGA

This section examines labor law violations alleged against employers in the LSR industry and compares them to labor law violations alleged against employers in other industries, using data from claims filed pursuant to PAGA. The data was obtained from records requests to the California Department of Industrial Relations.⁶

An evaluation of all PAGA awards recorded between FY 13-14 and the 7th month of FY 20/21 demonstrated that 1.5% of the awards were against LSRs, as shown in Table 1.⁷ LSR-industry employees represented in PAGA cases make up 2.1 percent of the employees in all industries represented in PAGA cases.

Table 1: Distribution of PAGA awards by industry category as a percentage of the total.⁸

Retail Trade	8.2%
Automobile Dealers	2.3%
Department Stores, General Merchandise Stores, and Warehouse Clubs and Supercenters	1.1%
Grocery Stores	1.5%
Retail Pharmacy	0.5%
Manufacturing	7.4%
Food and Beverage Manufacturing	2.4%
Paper Manufacturing	0.6%
Pharmaceutical Manufacturing	0.4%
Administrative and Support and Waste Management and Remediation Services	6.1%
Employment Services	3.5%

6 Refer to Methodology for details on obtaining PAGA case data.

7 See California Private Attorneys General Act of 2004: Outcomes and Recommendations, October 2021.

8 PAGA Unit. (FY 13-14 and the 7th month of FY 20/21). Baker & Welsh, LLC, California Private Attorneys General Act of 2004, CABIA Foundation, October 2021.

Janitorial	0.8%
Transportation	3.9%
Trucking	3.4%
Health Care and Social Assistance	7.5%
Wholesale Trade	6.6%
Construction	5.2%
Professional, Scientific, and Technical Services	4.8%
Restaurants and Other Eateries	4.6%
Limited-Service Restaurants	1.5%
Food Services and Bars	0.7%
Finance and Insurance	3.3%
Banking	1.0%
Insurance	1.0%
Information	1.2%
Information Technology	1.1%
Telecommunications	1.2%
Real Estate and Rental and Leasing	3.1%
Other Services (except Public Administration)	3.0%
Hotel	1.7%
Art, Entertainment and Recreation	1.5%
Amusement Park	0.2%
Agriculture, Forestry, Fishing and Hunting	1.2%
Dairy	0.3%
Hospital	1.4%
Educational Services	1.2%
Oil and Gas	1.1%
Warehousing	1.0%
Utilities	0.4%
Management of Companies and Enterprises	0.3%
Public Administration	0.2%
Unknown	1.5%
Total	100.0%

Table 2 compares summary statistics on PAGA suits for LSR compared to all industries in the state of California. LSR workers received on average \$716.85 per worker from PAGA awards while the industry average was \$1,263.62 per worker, a 56 percent difference. This difference can most likely be attributed to fewer and/or less serious violations being alleged. Given the lack of any impediment to alleging whatever violations might exist in PAGA lawsuits, the violations alleged are highly unlikely to omit violations that exist.

The total dollar amount of awards against LSRs constituted 1.8 percent of the total dollar amount of all PAGA awards.

Table 2. PAGA Court Case Award Data.

	All Industry Total FY 13/14 – June 2022	Limited-Service Restaurants FY13/14 – June 2022
Gross settlement or proposed settlement amount	\$8,247,456,934.67 ⁹	\$149,070,869.82 ¹⁰
Number of cases	7633	83
Average total case amount	\$1,081,491.86 ¹¹	\$1,796,034.58 ¹²
Average attorneys' fees ¹³	\$365,656.71 ¹⁴	\$622,423.91 ¹⁵
Average number of aggrieved employees	2,197	5,314 ¹⁶
Average payment per employee ¹⁷	\$1,263.62	\$716.85
Average number of plaintiffs ¹⁸	2	1
Average enhancement amount per plaintiff	\$8,547.68	\$7,428.61

Note: 33 cases that were dismissed without being litigated were not counted. Thirty-four records contain zero (0) or did not have settlement amounts and were settled out of court.

9 Del Taco, LLC (“Del Taco”), a wholly owned subsidiary of Jack in the Box Inc., entered into a settlement for \$50M or 35% of the total gross settlement amount or proposed settlement amounts for limited-service restaurants. If this settlement was excluded because it is an enterprise-wide outlier, then the gross settlement amount would be \$8,197,456,934.67 for Industry Total and \$99,070,869.82 for LSR.

10 Ibid.

11 The average total case amount for Industry is \$1,075,076.32 and for LSR it is \$1,208,181.34 with the exclusion of Del Taco settlement.

12 Ibid.

Filings with LWDA of PAGA Notices pursuant to Labor Code section 2699.3 (the first step in filing a PAGA claim) for all industries are increasing each year. However, there is no indication that the share of these filings against LSRs is increasing or decreasing in proportion to the overall number.

Conclusions

The two-part analysis in this report is grounded in the most complete dataset available on wage claims and PAGA claims in California, each spanning multi-year time periods. The data demonstrate that the limited-service restaurant industry does not experience a higher-than-average incidence of wage claims as has been previously suggested. By contrast, the data indicate that it most likely experiences an incidence of labor law violations at the lower end of the range experienced by industries overall in California. This analysis also shows there is no evidence of an unprecedented spike in LSR wage claims during the pandemic years.

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- 13 Not all records contained data on attorney fees, average payment per employee, number of plaintiffs, or enhancement amount or average enhancement amount per plaintiff. The numbers provided are the average of the records containing data.
- 14 If Del Taco case is excluded, the average attorneys' fees for Industry are \$362,544.38 and LSR is \$418,865.24.
- 15 *Ibid.*
- 16 Chipotle has been excluded from the number of aggrieved employee count (122,134) because it is a large, enterprise-wide outlier. The number of aggrieved employees would be 7,418 if included in the count.
- 17 Not all records contained data on attorney fees, average payment per employee, number of plaintiffs, or enhancement amount or average enhancement amount per plaintiff. The numbers provided are the average of the records containing data.
- 18 *Ibid.*

Methodology

WAGE CLAIM ANALYSIS

To analyze the scope of wage claims in California in the fast-food industry compared with other industries, this study uses data extracted from records of wage claims filed with the state Labor Commissioner’s office, housed by the state Department of Industrial Relations.¹⁹ Analysis was conducted for all claims of wage filed from January 1, 2017 to June 22, 2022.

Claim records for each included year were pulled for all North American Industry Classification System (NAICS) sectors (two-digit codes 11-92), as well as for the limited-service restaurant industry (LSR) defined by NAICS as code 722513.

Upon analyzing the employers named in the claims specifically designated under the limited-service code, it was observed that some wage claims naming restaurants traditionally considered to be fast food (e.g. Chipotle, Chick-fil-A, Subway, etc.) were not categorized under this code. The state records wage claims under codes as they are filed by plaintiffs, which may not always be correctly applied.

To attempt to report an accurate picture of the claims filed against limited-service establishments, the claims under 722513 were supplemented by a hand-review of the larger “Restaurants and eating places” industry (NAICS 7225), of which limited-service restaurants are a subset. Recognizable fast-food establishments in this larger category, including those in the *Quick Service Restaurant Magazine’s* 2021 list of the top 50 fast-food chains in the nation and a review of other likely fast-food establishments, were added to the original limited-service count for this analysis.²⁰

Data for private industry employment was extracted from the U.S. Department of Labor Bureau of Labor Statistics’ Quarterly Census of Employment and Wages.²¹ Annual averages for 2017 through 2021 were collected by each private NAICS sector (two-digit code) and industry (six-digit code for limited-service restaurants). To create a standardized metric that would compare the rate of incidence of alleged labor law violations for sectors and industries varying in size, the ratio of claims filed

19 <https://mycadir.force.com/wcsearch/s/>

20 <https://www.qsrmagazine.com/content/qsr50-2021-top-50-chart>

21 https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm#type=6&-year=2021&qtr=A&own=5&area=06000&supp=0

per 1,000 private sector employees was created by dividing the number of claims in each year by the QCEW annual employment average for each industry, for the years 2017 through 2021. To create this ratio for 2022 where the Bureau of Labor Statistics has not released an employment figure for 2022, the 2021 annual average was substituted.

PAGA ANALYSIS

Data was obtained from the LWDA, DIR, and DLSE in response to Public Records Act (PRA) request that was used in the report, the *California Private Attorneys General Act of 2004: Outcomes and Recommendations*, October 2021. Two additional PRA requests were made to the PAGA Unit for updates on PAGA court cases and DLSE investigations from February 2021 to June 2022.

Online search of the PAGA web page was conducted for known fast-food restaurants, i.e., Burger King, Carl's Jr., Chick-Fil-A, Del Taco, Domino's Pizza, Jack in the Box, KFC, McDonald's, Pizza Hut, Popeyes, Taco Bell and Wendy's.²² Also included in the data set was information from an article published 6/9/2022, "Jack in the Box (JACK) Reports \$50M Settlement in Class Action Labor Suit" regarding Del Taco, a wholly owned subsidiary of Jack in the Box.²³

In a few cases, the records did not indicate with absolute certainty whether an establishment belonged in the LSR category. In those cases, the researchers made their best judgment as to whether the establishment belonged or did not belong in that category. Where any business was described by franchisee name and where information was available, it was linked back to the company.

22 <https://cadir.secure.force.com/PagaSearch/PAGASearch>

23 <https://www.streetinsider.com/Corporate+News/Jack+in+the+Box+%28JACK%29+Re-ports+%2450M+Settlement+in+Class+Action+Labor+Suit/20198046.html>.

Appendix

Table A1. Distribution of businesses and employment in California by industry category as a percentage of the total, 2021.²⁴

Industry Sector	NAICS	Employment (Annual Averages) ²⁵	Percent of Total Employment	Establishments ²⁶	Percent of Total Establishments
Agriculture, forestry, fishing and hunting	11	410,949	2.5%	16,910	1.0%
Mining, quarrying, and oil and gas extraction	21	16,626	0.1%	794	0.0%
Utilities	22	59,506	0.4%	1,507	0.1%
Construction	23	883,007	5.4%	88,504	5.1%
Manufacturing	31-33	1,277,681	7.9%	44,629	2.6%
Wholesale trade	42	647,630	4.0%	63,941	3.7%
Retail trade	44-45	1,600,498	9.8%	106,998	6.2%
Transportation and warehousing	48-49	718,533	4.4%	33,205	1.9%
Information	51	560,745	3.5%	30,671	1.8%
Finance and insurance	52	539,536	3.3%	53,957	3.1%
Real estate and rental and leasing	53	288,925	1.8%	62,444	3.6%
Professional and technical services	54	1,352,685	8.3%	168,907	9.8%
Management of companies and enterprises	55	242,855	1.5%	4,676	0.3%
Administrative and waste services	56	1,118,237	6.9%	56,954	3.3%

24 The Bureau of Labor Statistics. (2021). Quarterly Census of Employment and Wages. Retrieved from <https://www.bls.gov/cew/downloadable-data-files.htm>.

25 https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm#type=6&year=2021&qtr=A&own=5&area=06000&supp=0

26 *Ibid.*

Educational services	61	313,570	1.9%	17,490	1.0%
Health care and social assistance	62	2,418,905	14.9%	654,216	37.8%
Arts, entertainment, and recreation	71	238,913	1.5%	31,051	1.8%
Accommodation and food services	72	1,403,117	8.6%	88,242	5.1%
Other services, except public administration	81	480,618	3.0%	98,199	5.7%
Unclassified	99	1,992	0.0%	2,065	0.1%
Restaurants and other eating places	7225	1,173,286	7.2%	73,674	4.3%
Limited-service restaurants	722513	519,992	3.2%	31,309	1.8%
TOTAL	--	16,267,806	100.0%	1,730,343	100.1%

Table A2. Total DLSE wage claims by NAICS sector and limited-service industry, 2017-2022.²⁷

Industry	NAICS	2017	2018	2019	2020	2021	2022 (H1)
Ag., forestry, fishing, & hunting	11	1,004	866	1,162	895	807	462
Mining	21	33	50	49	22	14	17
Utilities	22	227	288	246	176	140	77
Construction	23	1,960	2,874	2,987	1,729	1,311	822
Manufacturing	31-33	5,096	5,250	4,343	2,312	2,019	1,106
Wholesale trade	42	501	804	795	654	425	300
Retail trade	44-45	2,463	3,560	3,416	2,623	2,729	1,568
Transpo. & warehousing	48-49	2,613	2,863	3,360	7,605	1,826	1,365
Information	51	1,261	1,467	1,534	1,377	1,209	405
Finance & insurance	52	675	973	904	575	527	262

27 <https://mycadir.force.com/wcsearch/s/>

Prof., sci., tech. services	54	2,220	4,456	5,031	2,999	2,338	1,555
Mgmt. & related services	55	99	49	66	46	28	12
Admin. and waste	56	3,679	4,952	5,634	3,365	2,726	1,940
Educ. services	61	379	770	1,030	621	576	403
Health care & soc. assistance	62	2,889	4,995	4,272	2,999	3,178	2,322
Arts, ent., & rec.	71	389	580	646	428	398	256
Accom. & food services	72	3,726	6,288	6,382	3,729	2,734	2,100
Other services	81	1,322	2,332	2,049	1,523	1,315	765
Public administration	92	335	576	473	485	572	321
Limited-service restaurants	722513	532	784	826	373	428	268
Adjusted limited-service	-	613	947	1,065	624	651	418
TOTAL		30,871	43,993	44,379	34,163	24,872	16,058

Table A3. Total DLSE wage claims by NAICS sector and limited-service industry, 2017-2022.²⁸

Industry	NAICS	Total Claims (2017- June 2022)	Percent of Total Claims
Accom. & food services	72	24,959	12.8%
Admin. and waste	56	22,296	11.5%
Health care & soc. assistance	62	20,655	10.6%
Manufacturing	31-33	20,126	10.4%
Transpo. & warehousing	48-49	19,632	10.1%
Prof., sci., tech. services	54	18,599	9.6%
Retail trade	44-45	16,359	8.4%
Construction	23	11,683	6.0%
Other services	81	9,306	4.8%
Information	51	7,253	3.7%

28 <https://mycadir.force.com/wcsearch/s/>

Ag., forestry, fishing, & hunting	11	5,196	2.7%
Adjusted limited-service	-	4,318	2.2%
Finance & insurance	52	3,916	2.0%
Educ. services	61	3,779	1.9%
Wholesale trade	42	3,479	1.8%
Limited-service restaurants	722513	3,211	1.7%
Public administration	92	2,762	1.4%
Arts, ent., & rec.	71	2,697	1.4%
Utilities	22	1,154	0.6%
Mgmt. & related services	55	300	0.2%
Mining	21	185	0.1%

Table A4. Ratio of DLSE wage claims per 1,000 employees, 2017-2022.²⁹

Industry	2017	2018	2019	2020	2021	2022	Annual Average
Transpo. & warehousing	4.7	4.8	5.3	11.5	2.5	1.9	5.1
Utilities	3.9	5.1	4.4	3.0	2.4	1.3	3.3
Admin. and waste	3.4	4.4	5.0	3.2	2.4	1.7	3.3
Other services	2.5	4.3	3.7	3.4	2.7	1.6	3.0
Restaurants and other eating places	2.3	3.8	3.8	2.9	1.8	1.4	2.7
Accom. & food services	2.3	3.8	3.7	2.9	1.9	1.5	2.7
Manufacturing	3.9	4.0	3.3	1.8	1.6	0.9	2.6
Prof., sci., tech. services	1.8	3.5	3.8	2.3	1.7	1.1	2.4
Information	2.5	2.8	2.8	2.6	2.2	0.7	2.3
Construction	2.4	3.3	3.4	2.0	1.5	0.9	2.3
Ag., forestry, fishing, & hunting	2.4	2.0	2.7	2.2	2.0	1.1	2.1

29 <https://mycadir.force.com/wcsearch/s/>

Educ. services	1.2	2.4	3.1	2.1	1.8	1.3	2.0
Retail trade	1.5	2.1	2.1	1.7	1.7	1.0	1.7
Arts, ent., & rec.	1.3	1.8	2.0	2.1	1.7	1.1	1.6
Mining	1.7	2.5	2.4	1.3	0.8	1.0	1.6
Health care & soc. assistance	1.3	2.1	1.8	1.3	1.3	1.0	1.5
Finance & insurance	1.2	1.8	1.7	1.1	1.0	0.5	1.2
Adjusted Limited-service	1.2	1.8	1.9	1.3	1.2	0.8	1.4
Limited service restaurants	1.0	1.5	1.5	0.8	0.8	0.5	1.0
Wholesale trade	0.7	1.1	1.1	1.0	0.7	0.5	0.9
Mgmt. & related services	0.4	0.2	0.3	0.2	0.1	0.0	0.2



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