



COMMENTS TO THE FEDERAL TRADE COMMISSION
Re: Solicitation for Public Comments on Provisions of Franchise Agreements
and Franchisor Business Practices
Docket # FTC-2023-0026
Submitted by the Service Employees International Union & the Strategic Organizing Center
June 8, 2023

Introduction

The Service Employees International Union (SEIU) and the Strategic Organizing Center (SOC) submit these comments in response to the Federal Trade Commission's (FTC) Request for Information Regarding Provisions of Franchise Agreements and Franchisor Business Practices dated March 10, 2023 (RFI). The Service Employees International Union unites two million diverse members working in healthcare, the public sector, and property services in the United States, Canada and Puerto Rico. SOC is a democratic federation of labor unions that, along with its affiliates, has engaged the Federal Trade Commission on a number of issues, including fair competition in the franchise industry and pharmacy benefit manager sector, toward the goal of eliminating anticompetitive and abusive business practices that harm small businesses, workers and consumers.

In the past several years, we have engaged repeatedly with the Commission and its staff, seeking a comprehensive review of the franchisor-franchisee relationship and the abuses attendant thereto to address the extreme power imbalance in the franchise model and make the system more fair and sustainable for the people who bear the costs of this system: the franchisees and the workers they employ. SOC and SEIU are encouraged by the FTC's decision to examine the franchisor-franchisee relationship and franchisor practices under the full range of the FTC's powers provided by Section 5 of the FTC Act. As described below and in the material we resubmit here, the power disparity endemic in the franchisor-franchisee relationship and the resulting abuses of franchisees – which ultimately harms their workers – clearly raise concerns about deception, unfairness, and unfair methods of competition under Section 5.

In 2015, we submitted a Petition for Investigation requesting that the Commission investigate the profound power imbalance between franchisors and franchisees under the Franchise Rule (the 2015 Petition, Exhibit 1). The 2015 Petition comprehensively analyzed 14 major franchise systems, and showed how the Franchise Disclosure Document (FDD) and accompanying franchise agreement allow franchisors to exploit this power imbalance in several ways. We identified five key franchisor practices as the most problematic and likely unfair under Section 5:

- 1) incomplete or misleading financial performance representations made to prospective franchisees by franchisors;

- 2) significant capital investments required by franchisees during the course of the franchise agreement or as a condition of renewal;
- 3) retaliation against franchisees that join franchisee associations;
- 4) unfair termination or nonrenewal of franchise agreements; and
- 5) arbitrary denial of franchisees' requests to transfer the business.

In 2020, we submitted comments in response to the FTC's request for comments regarding the Franchise Rule, 16 CFR 436, Comment, Matter No. R511003 (2020 Comments, Exhibit 2).¹ The 2020 Comments provided an update of the contractual research we submitted with the 2015 Petition. We analyzed key contract terms from the most recent FDDs available for the 14 franchise systems we analyzed in the 2015 submission and included a chart summarizing and comparing these key contractual provisions. The analysis of updated contract provisions is attached as Exhibit 2-A. The summary chart of key contract provisions is attached as Exhibit 2-B. The 2020 contract materials show that although there are some minor variations, these typical franchise agreements and the fundamental problems they reflect have not changed or improved in any relevant way since 2015.

Our 2020 Comments also included an update on franchise issues that illustrates how problems related to abuse of the franchise model have persisted or worsened in franchised industries since 2015, as follows: 1) the complaints in two class-action race discrimination suits brought by current and former Black McDonald's franchisees that illustrate the consequences of oppressively unequal bargaining power and an arbitrary franchise sale and transfer system; 2) the recent history of conflict over capital investments and similar cost issues between McDonald's and its franchisees that further demonstrates the ultimate control wielded by the franchisor in the franchise system; 3) an analysis of how several companies have attempted to use the franchise system to centralize control and shift risk to franchisees in such extreme ways that franchisees have asserted in litigation they are direct employees of franchisors and, in some instances, even failed to earn minimum wage while working in their franchises; and 4) a review of the ongoing widespread use of no-poach agreements in franchised industries, which hinder competition, harm workers, and distort the labor markets in these industries.

Finally, in the section below we provide further evidence of the harms created for franchisee employees – the almost 10 million workers employed in franchised businesses² – by the exploitative relationship between franchisors and franchisees. The extractive franchise model, based on franchisors having meticulous control over – but virtually no responsibility for – numerous small businesses, results in low-margin businesses under constant pressure to reduce costs and cut corners, in which labor costs are almost the only cost variable the franchisees control. Our evidence of worker harm demonstrates that workers ultimately bear the brunt of this exploitative system designed primarily to enrich the firm at the top – the franchisor.

¹ Fed. Trade Comm'n Proposed Rule, Disclosure Requirements and Prohibitions Concerning Franchising, 84 FR 9051, March 13, 2019, <https://www.federalregister.gov/documents/2019/03/13/2019-04466/disclosure-requirements-and-prohibitions-concerning-franchising>.

² Bárbara Zamora-Appel and Nidaal Jubran, "Franchising is More than Just Fast Food," U.S. Census Bureau, December 1, 2021, <https://www.census.gov/library/stories/2021/12/franchising-is-more-than-just-fast-food.html>.

Franchised businesses are significant employers, responsible for 5.6 percent of all private non-farm jobs in the U.S.,³ but as our materials show, abuses of the franchise model – and their effects on the economy – are highly problematic. There is a massive imbalance between the financial, informational and legal power of the large, often-multinational franchisors, and small-business franchisees with which they “partner.” As our analyses of contractual provisions show, franchisors exercise virtually unfettered control over every aspect of franchisees’ business operations and can arbitrarily and unilaterally change contract provisions or other terms of the franchise relationship. Franchisors are also able to unfairly deny renewals, transfers, or sales of franchise operations, and unfairly terminate franchisees, which can bring financial ruin to franchisees who cannot easily migrate their operations to another competing business. In addition, franchisors often exploit their control and the threat of non-renewal or termination to exact unreasonable capital investments, whose timing and cost are at the sole discretion of franchisors. This power imbalance not only harms franchisees – who are often dominated through agreements that are essentially contracts of adhesion, with little financial or legal recourse – but also harms workers employed by franchised businesses who bear unfair consequences in terms of wages, working conditions and job mobility.

Moreover, as our 2020 comments illustrate, the power imbalance involved in the current franchise structure may engender other predatory practices. These include racial and other forms of discrimination by franchisors against franchisees, abusing the franchise model to thwart minimum wage laws, and other practices that enrich franchisors at the expense of franchisees. Other practices, such as using no-poach agreements to restrain competition and wages for franchise workers, may constitute unfair methods of competition or anticompetitive practices that “go[] beyond competition on the merits.”⁴

Accordingly, we believe many current franchisor practices described in our comments are deceptive or unfair under Section 5 of the FTC Act because they cause substantial injury to franchisees and workers but do not provide countervailing benefits to consumers or competition and are not reasonably avoidable by the franchisees under the current, lopsided system.

Indeed, the current form of the franchisor-franchisee relationship – a dramatically imbalanced arrangement characterized by one-sided contracts, onerous and arbitrary investment requirements and sale restrictions, and similar disadvantageous terms and restraints for franchisees – raises the question whether the control exerted by franchisors over franchisees should be permissible only within a single firm in order to ensure the firm considers and absorbs the actual costs of the extended business model it operates. The franchise system has, in effect, legalized the use of myriad vertical restraints that allow

³ *The Economic Impact of Franchised Businesses* at E-1, prepared by PWC for IFA Education and Research Foundation, Sept. 2016, https://www.franchise.org/sites/default/files/2016/09/Economic%20Impact%20Vol%20IV_Part%20I_20160908.pdf. Franchises are directly and indirectly responsible for ten percent of private non-farm jobs in the U.S. if spillover effects, such as effects on franchisor suppliers, are included. *Id.*

⁴ Fed. Trade Comm’n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act, File No. P221202 (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf, at 8.

franchisors to exert extraordinary control over – and profit from – groups of small businesses while simultaneously avoiding the costs and liability that legal responsibility for those small businesses and their workers would entail.⁵ Thus, there are multiple aspects of the franchise business model that may also be vulnerable to FTC challenge as unfair methods of competition. These include restraints imposed on franchisees with respect to investments, purchasing decisions, and transfers of businesses. The employment relationships – whereby franchisors dictate virtually every aspect of franchisees’ business and costs, but then disclaim employer responsibility for franchise workers – is similarly suspect as unfair on competition grounds. By externalizing their costs in such broad and systematic ways, franchisors gain structural competitive advantages over other businesses. The basic unfairness of the business model to franchisees, competitors, and workers therefore also deserves scrutiny for both policy and enforcement action.

For these reasons, we urge the Commission to undertake a thorough review of these problems and utilize its broad policy and enforcement authority under Section 5 to address the significant structural power disparities and ongoing, endemic abusive practices in the franchise industry.

Harms to Workers in Franchised Businesses

In franchised businesses, especially in the fast-food sector, franchisors control nearly every aspect of their franchisees’ operations through multiple, mutually reinforcing mechanisms. Nowhere are the harms of control-without-responsibility⁶ more apparent than in the treatment of workers in the franchise system, whom franchisors control in minute ways but refuse to recognize as direct or joint employees.

Franchisors’ control over franchisees gives franchisors a profound influence on the work lives of employees in franchised businesses. At the same time, the franchise business model is based on maximal extraction from franchisees. Particularly in low-margin businesses such as restaurants, this creates a major incentive for franchisees, in turn, to extract as much as they can from workers at the smallest possible cost. The squeeze leads to unconscionable conditions for workers, and franchisors’ multiple control mechanisms further implicate franchisors in those conditions. The fast-food workforce is majority women and disproportionately Black and brown, and conditions are often worse for Black and brown fast-food workers and for fast-food workers who are undocumented. Women of color working in fast food, for example, experience higher rates of retaliation when they report sexual harassment,⁷ and undocumented fast-food workers often face the threat of deportation if they protest

⁵ See, e.g., Brian Callaci, *Control Without Responsibility: The Legal Creation of Franchising, 1960–1980*, 22 ENTER. & SOC’Y 156-182 (Mar. 2020), <https://www.cambridge.org/core/journals/enterprise-and-society/article/abs/control-without-responsibility-the-legal-creation-of-franchising-19601980/0C5B894F5E216BC25D396D36B9FA45E6>.

⁶ *Id.*

⁷ Hart Research, “Key Findings from a Survey of Women Fast Food Workers,” Oct. 5, 2016, <http://hartresearch.com/wp-content/uploads/2016/10/Fast-Food-Worker-Survey-Memo-10-5-16.pdf>.

wage theft or other violations.⁸ Addressing the conditions of fast-food workers is therefore an issue of equity and fairness.

Numerous studies of government data and surveys of fast-food workers themselves have revealed the breadth and depth of suffering this system inflicts on workers, which includes:

- **Wage theft and child labor:** Large majorities of fast-food workers in multiple surveys report their employer paying them less than they are legally owed.⁹ And the U.S. Department of Labor has fined operators of hundreds of franchised fast-food restaurants in multiple states in recent years for child-labor violations.¹⁰
- **Sexual harassment and assault:** Four in 10 women fast-food workers report experiencing sexual harassment on the job.¹¹
- **Unsafe workplaces:** Fast-food workers deal with multiple threats to their safety and health in addition to sexual harassment and assault including:

⁸ Annette Bernhardt et al., “Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities,” National Employment Law Project, 2009, at 25, <https://www.nelp.org/publication/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-americas-cities/>; Ruth Milkman, Ana Luz González & Victor Narro, “Wage Theft and Workplace Violations in Los Angeles,” Institute for Research on Labor and Employment, University of California, Los Angeles, 2010, at 5, 28-28, <https://www.labor.ucla.edu/publication/wage-theft-and-workplace-violations-in-los-angeles/>.

⁹ Farida Jhabvala Romero, *Most Fast-Food Workers Are Victims of Wage Theft, Survey Finds*, KQED, May 10, 2022 <https://www.kqed.org/news/11913643/most-fast-food-workers-are-victims-of-wage-theft-survey-finds>; Tiffany Hsu, *Nearly 90% of fast-food workers allege wage theft, survey finds*, LOS ANGELES TIMES, April 1, 2014; Nell Casey, *Report: NYC Fast Food Workers Are Victims Of Widespread Wage Theft*, GOTHAMIST, May 16, 2013, <https://gothamist.com/food/report-nyc-fast-food-workers-are-victims-of-widespread-wage-theft>.

¹⁰ See, e.g., *US Department of Labor Finds Child Labor Violations by Operator of 13 Greater Pittsburgh Area McDonald’s Locations, Affecting 101 Minor-Aged Workers*, U.S. Department of Labor press release, Dec. 5, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20221205-0>; *US Department of Labor Finds South Carolina Fast Food Restaurants Endangered Minor Employees, Violated Their Work Hours Limits*, U.S. Department of Labor press release, Feb. 9, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20220209-0> (Subway, Burger King, Popeye’s); *US Department of Labor Investigation Uncovers Federal Child Labor Law Violations at Restaurants Located in 9 States*, U.S. Department of Labor press release, Jan. 7, 2020, <https://www.dol.gov/newsroom/releases/whd/whd20200117-0> (Wendy’s); *Sonic Franchise Operator Fined Nearly \$42K After Federal Investigation Finds Teens Allowed to Work Beyond Legal Limits at Three Wichita-Area Locations*, U.S. Department of Labor press release, Oct. 4, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20221004> (Sonic); *US Department of Labor Investigation Results in California Fast-Food Franchisee Paying \$511,117 in Back Wages and Liquidated Damages*, U.S. Department of Labor press release, July 6, 2018, <https://www.dol.gov/newsroom/releases/whd/whd20180706-0> (Jack in the Box). See also Peter Romeo, *Dairy Queen franchisee fined \$42K for teen-hour violations*, Restaurant Business Online, Sept. 26, 2022 <https://www.restaurantbusinessonline.com/workforce/dairy-queen-franchisee-fined-42k-teen-hour-violations> (Dairy Queen).

¹¹ Hart Research, *supra* n. 7.

- **Violence:** Routinely facing physical attack and the threat of violence, based on analysis of tens of thousands of 911 calls from fast-food restaurants,¹² a review of media coverage¹³ and a survey of fast-food workers.¹⁴
- **Workplace injuries:** Nearly nine in 10 fast-food workers report on-the-job injuries¹⁵ from burns and cuts, to strains and sprains, to slipping and falling.
- **COVID-19:** During the COVID-19 pandemic fast-food workers sickened and died as employers required them to work while sick, failed to inform staff of exposures, and failed to provide personal protective equipment.¹⁶

In this section we address the prevalence of each of these ills. In addition to studies and surveys, we draw on fast-food workers' accounts – primarily in complaints to regulators in California, where fast-food workers have been joining together to win a voice in setting fast-food industry standards while seeking redress and recompense through filing some 250 complaints with state and local labor standards and health and safety agencies. Exhibit 3 provides numerous additional worker narratives in each category, excerpted from those complaints.

Wage theft and child labor

Wage theft: Large majorities of fast-food workers experience wage theft,¹⁷ and food service is among the industries where wage theft is most common,¹⁸ according to multiple national, state and local

¹² *Beaten, Stabbed, Silenced: Violence in California's Fast-Food Industry and Workers' Fight for a Voice*, Fight for \$15 and a Union, Dec. 2021, https://fastfoodjusticeahora.com/wp-content/uploads/2021/12/Violence_Fast-Food-FINAL-.pdf.

¹³ Deborah Berkowitz, *Behind the Arches: How McDonald's Fails to Protect Workers from Workplace Violence*, May 22, 2019, <https://www.nelp.org/publication/behind-the-arches-how-mcdonalds-fails-to-protect-workers-from-workplace-violence/>.

¹⁴ Hart Research Associates, National COSH Fast Food Safety Survey, Feb. 2015, https://web.archive.org/web/20150325153154/https://www.coshnetwork.org/sites/default/files/FastFood_Workplace_Safety_Poll_Toplines.pdf.

¹⁵ *Id.*

¹⁶ Rajiv Bhatia and Martha Dina Argüello, *COVID-19 Hazards Among California Fast-Food Workers*, Physicians for Social Responsibility, April 2019 (on file with SEIU); Yea-Hung Chen et al., *Excess mortality associated with the COVID-19 pandemic among Californians 18–65 years of age, by occupational sector and occupation: March through October 2020*, medRxiv, Jan. 22, 2021, <https://doi.org/10.1101/2021.01.21.21250266>; Lance Williams, *Diaper masks, close quarters: Fast-food restaurants have struggled to protect workers from COVID-19*, LOS ANGELES TIMES, Jan. 15, 2021.

¹⁷ See sources cited *supra* n. 9.

¹⁸ Janice Fine, et al., *Maintaining effective U.S. labor standards enforcement through the coronavirus recession*, Washington Center for Equitable Growth, Sept. 2020, <https://equitablegrowth.org/wp-content/uploads/2020/09/090320-labor-enforcement-report.pdf>; Jacob Barnes et al., *A Road map for Strategic Enforcement Targeting: Complaints and Compliance with Los Angeles County's Minimum Wage*, Rutgers University School of Management and Labor Relations Data Brief, Feb. 2021, <http://file.lacounty.gov/SDSInter/bos/supdocs/148437.pdf> at 40, 45; Daniel Galvin et al., *A Roadmap for Strategic Enforcement: Complaints and Compliance with San Francisco's Minimum Wage*, prepared for San Francisco Office

studies. Fast-food restaurant owners steal from workers by requiring them to work before clocking in and/or after their shifts. They refuse to allow workers to take legally required breaks. And they devise often elaborate schemes to avoid paying overtime premiums. Wage theft is apparently worse in franchised restaurants than those directly owned by fast-food corporations. An analysis of federal Labor Department enforcement data found that franchised fast-food restaurants “have far higher levels of noncompliance [with wage and hour laws] than comparable company-owned establishments.”¹⁹ Here are two illustrative examples:

‘We don’t pay overtime’: *When workers at a Jack In The Box in Folsom, Calif., heard that workers at a Jack In The Box in nearby Sacramento were protesting wage theft, they started talking with each other, and management threatened to call immigration.²⁰ This was a potent threat, since many of the workers are not documented. Nonetheless, several workers filed a complaint with the state Department of Labor Standards Enforcement. The workers charged that management had been denying breaks for years.*

One worker explained that when she was forced to work through breaks, her manager would instruct her to punch out to show – falsely – that she had actually taken the breaks. “I would refuse, and she would tell me that she was just going to change it later on the computer anyway. On at least four occasions, she brought me into the office and asked me why I did not punch out for breaks, and I watched her manually change it to say that I did take breaks. She would say ‘I fixed it for you.’”²¹ In 2021, a manager asked this worker to regularly work extra shifts because the store was understaffed – as were many at that point in the pandemic. “I worked six eight-hour shifts each week, for one and a half months,” she recalls, “but I was not paid any overtime. I asked [a manager] why there was no overtime on my check, and she said: “We don’t pay overtime here.”²² The workers also charged that their employer had denied them legally required sick pay and COVID/vaccine pay – and had fired one of them for taking a sick day to tend to an injury.²³ The group filed wage claims in January 2022 totaling over \$140,000.²⁴

Working under two names: *A manager at a Vallejo, Calif., McDonald’s required an employee to work seven days a week, often until 2 a.m., and avoided paying overtime by having him clock in alternately under his own name and under the name of a former employee. “The store manager*

of Labor Standards Enforcement, Sept. 2020, https://smlr.rutgers.edu/sites/default/files/Documents/CiWO/20_0828_sanfrancisco_study.pdf; Elise Gould and David Cooper, *Seven facts about tipped workers and the tipped minimum wage*, Economic Policy Institute, May 31, 2018, <https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>.

¹⁹ Minwoong Ji and David Weil, *The Impact of Franchising on Labor Standards Compliance*, ILR REVIEW, 68(5), Oct. 2015, <https://sci-hub.hkvisa.net/10.1177/0019793915586384>.

²⁰ Complaint to California Labor Commissioner, January 15, 2022 - Wage Theft, Jack In The Box, 9550 Greenback Lane, Folsom CA 95630, p. 10 (on file with SEIU).

²¹ *Id.*

²² *Id.*

²³ *Id.* at 11.

²⁴ *Id.* at 2.

often checked in with me via text about how many hours I was working under each name and gave me instructions about what name to use and when,” the worker stated in a 2023 complaint to the California Department of Labor Standards Enforcement.²⁵ “The manager withheld the check under the second name, cashed it for me, kept some of my wages for himself, and paid me what should have been my overtime wages in cash, at the regular rate of pay.”²⁶

When the worker learned about his rights through the Fight for \$15 and a Union and started asking the manager why he wasn’t being paid for all his hours, the manager turned to threats. The manager told the worker that, “he was the only one who could cash my second check, threatening not to cash the second check if I wouldn’t keep working my overtime hours under the second name. I remember one day crying for a long time while I worked at the grill making hamburgers because [the manager] withheld my second check because I said I wanted to work under my own name for overtime hours.”²⁷ The manager also told the worker that “the police would deport me if they caught me at a union action.”²⁸

Child Labor: The New York Times has recently exposed numerous companies using immigrant children to make auto parts, clean slaughterhouses with corrosive chemicals, and saw planks overnight,²⁹ and the number of children employed in violation of child labor laws more than doubled from 2017 to 2022.³⁰ Yet, the restaurant industry is advocating for *weaker* protections for underage workers.³¹ The fast-food industry is routinely violating existing child labor rules, as the U.S. Department of Labor has fined operators of hundreds of franchised fast-food restaurants in multiple states for violating child labor laws.³² In the last few years, the agency has issued fines to fast-food franchisees for illegally employing children during school hours; for allowing children to work more or later hours than allowed; for allowing them to operate fryers, slicers and other dangerous equipment;³³ and for other violations of child labor laws. Those citations include operators of:

²⁵ Complaint to California Labor Commissioner, January 25, 2023, McDonald’s, 170 Lincoln Rd E, Vallejo CA, p. 7 (on file with SEIU).

²⁶ *Id.* at 1.

²⁷ *Id.* at 2.

²⁸ *Id.* at 2-3.

²⁹ *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. TIMES, Feb. 25, 2023.

³⁰ SEIU analysis of U.S. Department of Labor Child Labor Enforcement Statistics, <https://www.dol.gov/newsroom/releases/whd/whd20220729> (retrieved April 18, 2023).

³¹ Jennifer Sherer and Nina Mast, *Child labor laws are under attack in states across the country*, Economic Policy Institute, March 14, 2023, Table 1, <https://www.epi.org/publication/child-labor-laws-under-attack/>.

³² See sources cited *supra* n. 10.

³³ See *Increases in Child Labor Violations, Young Workers’ Injuries Prompts Enhanced Outreach, Strong Enforcement by US Department of Labor*, U.S. Dept. of Labor press release, July 29, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20220729>; *Violations Found at Five Locations Prompt Wendy’s Franchisee to Take Corrective Actions at its 83 Pennsylvania, New York, New Jersey Restaurants*, U.S. Dept. of Labor press release, June 14, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20220614>.

- 13 Pittsburgh-area McDonald's;³⁴
- 36 Burger Kings in the Carolinas, Georgia and Florida;³⁵
- 99 Wendy's and Fazoli's restaurants in nine states;³⁶
- 11 Dairy Queen stores in Indiana and Michigan;³⁷
- 14 California Jack in the Box restaurants;³⁸
- 17 Sonic drive-ins in Kansas;³⁹ and
- Seven South Carolina Subway stores.⁴⁰

One example of exploitation of child labor in fast food comes from a 2022 complaint to the California Labor Commissioner:

"During my senior year in high school, my employer broke almost every child labor law and labor standard put in place to protect young workers like me," a former employee of a Fair Oaks, Calif., KFC reported. Managers routinely required him to work during school hours; to work 8- to 14-hour shifts on school days; to work past 10 pm on school nights; and to work as much as 55 hours a week – all violations of California's legal limits on when and how long employers may allow children to work.⁴¹ Over a six-month period, he stated, "I was frequently required to work seven days per week, and on the seventh day I was required to work 10-14 hour shifts, unpaid." He added, "When I cut my finger at work and was out on workers' comp ... I was required to come back to work unpaid when I was supposed to be healing."⁴² The worker wanted to be in school, "but my managers at KFC ... kept calling me in to work during school hours."

³⁴ US Department of Labor Finds Child Labor Violations by Operator of 13 Greater Pittsburgh Area McDonald's Locations, Affecting 101 Minor- Aged Workers, U.S. Department of Labor press release, Dec. 5, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20221205-0>.

³⁵ US Department of Labor Finds South Carolina Fast Food Restaurants Endangered Minor Employees, Violated Their Work Hours Limits, U.S. Department of Labor press release, Feb. 9, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20220209-0>.

³⁶ US Department of Labor Investigation Uncovers Federal Child Labor Law Violations at Restaurants Located in 9 States, U.S. Department of Labor press release, Jan. 7, 2020, <https://www.dol.gov/newsroom/releases/whd/whd20200117-0>.

³⁷ Operator of Dairy Queen franchises fined \$42K after federal investigation finds child labor violations at 11 Indiana, Michigan, locations, U.S. Department of Labor press release, Sept. 26, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20220926>.

³⁸ US Department of Labor Investigation Results in California Fast-Food Franchisee Paying \$511,117 in Back Wages and Liquidated Damages, U.S. Department of Labor press release, July 6, 2018, <https://www.dol.gov/newsroom/releases/whd/whd20180706-0>.

³⁹ Sonic Franchise Operator Fined Nearly \$42K After Federal Investigation Finds Teens Allowed to Work Beyond Legal Limits at Three Wichita-Area Locations, U.S. Department of Labor press release, Oct. 4, 2022, <https://www.dol.gov/newsroom/releases/whd/whd20221004>.

⁴⁰ *Supra* n. 35.

⁴¹ Complaint to California Labor Commissioner, February 28, 2022 - Child Labor, Wage Theft, KFC, Fair Oaks , p. 1 (on file with SEIU).

⁴² *Id.*

The worker's mother and grandmother called two higher-level franchise managers to complain, but neither stopped the violations.⁴³ In fact, the worker stated, upper management of this KFC franchise **also** took part in stealing his wages: "The Area Consultant told me that after 40 hours of work I was supposed to clock in under the name of a manager, and he said the manager would pay me cash for my hours."⁴⁴ This scheme "avoided paying me overtime and resulted in the manager getting paid for work they did not perform, as I was paid \$13 per hour, but the manager was earning \$18 for every hour I worked."⁴⁵ The worker's wage claim, covering about a year, totaled over \$37,000.⁴⁶

The National Restaurant Association endorsed a federal bill to allow children to work more and later hours,⁴⁷ and its chapters have supported similar state legislation that passed in New Hampshire and is pending in Ohio and Iowa. They are among at least 10 states that have recently passed or are considering legislation to weaken child labor laws.⁴⁸ "The response in these states is not to protect those children from exploitation," as the Times editorialized, "but instead to make it legal."⁴⁹

Sexual harassment & sexual assault:

Large shares of fast-food workers experience sexual harassment or sexual assault at work according to national surveys: Over three quarters of women working at McDonald's restaurants polled in 2020 said they had experienced sexually inappropriate conduct from comments to touching to rape, and four in 10 women fast-food workers surveyed in 2016 reported facing sexual harassment at work.⁵⁰ Exacerbating the harm, many who report assault or harassment to superiors face hours cuts, worse work duties, denial of raises or promotions or even firing. Women of color report higher rates of this kind of retaliation than white women.⁵¹

Workers and advocates have filed dozens of lawsuits and complaints against fast-food employers, including 23 judicial and regulatory complaints filed in 2019 against McDonald's.⁵² The company was then led by Steve Easterbrook, who turned out to have had multiple inappropriate relationships with

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 2.

⁴⁶ *Id.* at 9.

⁴⁷ *Johnson Introduces TEENS Act to Increase Youth Workforce Participation*, Office of U.S. Rep. Dusty Johnson, Sept. 15, 2022, <https://dustyjohnson.house.gov/media/press-releases/johnson-introduces-teens-act-increase-youth-workforce-participation>; *Could extra teen working hours help restaurants with the labor shortage?* National Restaurant Association, Sept. 23, 2022, <https://restaurant.org/education-and-resources/resource-library/could-extra-teen-working-hours-help-restaurants-with-the-labor-shortage/>.

⁴⁸ Jennifer Sherer and Nina Mast, *supra* n. 31.

⁴⁹ New York Times Editorial Board, *The Dangerous Race to Put More Children to Work*, N.Y. TIMES, March 24, 2023.

⁵⁰ *Supra* n. 7.

⁵¹ *Id.*

⁵² Melena Ryzik, *In a Test of Their Power, #MeToo's Legal Forces Take On McDonald's*, N.Y. TIMES, May 21, 2019.

company employees⁵³ before he was fired.⁵⁴ McDonald's has effectively acknowledged that it has responsibility and power to address harassment by adopting a set of "Global Brand Standards" addressing harassment and discrimination that are binding on all McDonald's locations, including franchised stores.⁵⁵ Nonetheless McDonald's workers continue to experience harassment at work, as detailed in these examples:

Kristi Maisenbach's first real job, at 19, was at a Folsom, Calif., franchised McDonald's,⁵⁶ and soon after she started, her supervisor began harassing her daily. His actions included describing his penis, suggesting that she "should try it out"; grabbing her breasts; and rubbing his genitals against her buttocks.⁵⁷ After the manager texted her offering \$1,000 for oral sex, she complained to the store's general manager.⁵⁸ The GM chastised her for having allegedly "flirted" with the harasser; allowed him to keep supervising her; and gradually reduced her hours. Eventually, unable to make rent, she quit to find another job.⁵⁹ Ms. Maisenbach filed a sexual harassment lawsuit that the franchisee ultimately agreed to settle.⁶⁰

Brittany Hoyos also faced harassment at her first job at a Tucson, Ariz., McDonald's franchise. She started at the restaurant when she was 16, working 40 hours a week – after school and cheerleading practice – and was named employee of the month. When a manager began trying to kiss her, touching her hair and brushing up against her, at first she didn't tell her mother, who also worked at the restaurant. When Brittany came home crying, however, her mother notified management, but the abuse continued. Coworkers called her a "whore," and managers pressed her mother to describe her daughter's complaints as gossip. Ultimately, Brittany was fired for minor infractions she says others also committed with no consequences, and her mother quit.⁶¹

⁵³ SEC Charges McDonald's Former CEO for Misrepresentations About His Termination, U.S. Securities & Exchange Commission, Jan. 9, 2023, <https://www.sec.gov/news/press-release/2023-4>.

⁵⁴ Derek Saul, SEC Charges Former McDonald's CEO Easterbrook For Lying About Extent Of Workplace Misconduct, FORBES, Jan. 9, 2023. <https://www.forbes.com/sites/dereksaul/2023/01/09/sec-charges-former-mcdonalds-ceo-easterbrook-for-lying-about-extent-of-workplace-misconduct/?sh=901f837195d5>.

⁵⁵ McDonald's Implements Required Global Standards for Safe, Respectful and Inclusive Workplaces, McDonald's Corp. Press Release, April 14, 2021. <https://corporate.mcdonalds.com/corpmcd/our-stories/article/global-standards.html>.

⁵⁶ Notice of Removal at ¶ 16, Exhibit A to First Amended Complaint, Jan. 30, 2019, *Maisenbach v. McDonald's*, 3:19-cv-00539 (N.D. Cal.).

⁵⁷ *Id.* ¶ 20.

⁵⁸ *Id.* ¶¶ 21-22.

⁵⁹ *Id.* ¶¶ 22-24.

⁶⁰ Jt. Notice of Settlement and Stip. and Order, June 18, 2019, *Maisenbach v. McDonald's*, 3:19-cv-00539 (N.D. Cal.).

⁶¹ Ryzik, *supra* n. 52.

Unsafe workplaces

Violence: Fast-food franchisors require franchisees to follow detailed store layout standards,⁶² and those standards often ignore established guidelines for protecting employees from violent attacks, such as “physical separation of workers from customers” as the National Institute for Occupational Safety and Health recommends.⁶³ The lack of secured doors and drive-thru windows, for example, can allow angry customers to enter kitchens and other work areas and attack workers. As a result, the threat and reality of violence is routine in fast-food stores around the country: Nearly one in eight fast-food workers reported in a national poll that they personally have been injured in a workplace assault.⁶⁴ A survey of media coverage identified news stories about hundreds of shootings, assaults, robberies and sexual assaults at McDonald’s restaurants around the U.S.⁶⁵ – representing a fraction of fast-food violence, as it covered only one chain and only incidents severe enough to make the news. A survey by the Fight for \$15 and a Union, covering 911 calls from 643 fast-food restaurants across four major brands over four years in nine California cities identified over 77,000 violent or threatening incidents.⁶⁶ More than one in eight of these calls – some 10,000 – involved assault or sexual assault. Many fast-food restaurants generated hundreds of calls over the four-year span – as many as seven per week.⁶⁷

A sobering example comes from an Oakland Taco Bell, where workers have experienced of a history of violence that franchise management has failed to acknowledge, let alone address. When workers complained in 2022 to CalOSHA about a series of attacks and other violent incidents at an Oakland Taco Bell,⁶⁸ management replied that they were “not aware of any incidences where customers have become physically violent with employees at this workplace.”⁶⁹ Workers called that assertion “demonstrably false,”⁷⁰ noting that there had been 36 calls to 911 from the Taco Bell from August 2021 to August 2022.⁷¹ They filed another CalOSHA complaint. In the filings the workers detail numerous violent encounters, including assaults, robberies at gunpoint and knifepoint; and breaking car windows. Here is one recent example:

On the evening of September 15, 2022, “I spent a terrifying hour at work that included three different attackers at my workplace, no response from upper management, and resulted in

⁶² See First Amended Complaint at ¶ 121, Jan. 7, 2020, *Acuna et al. v. McDonald’s Corp.*, 2019 CH 13477 (Ill. Cir. Ct. Cook Co.), <http://jamhoff.procurro.com/wp-content/uploads/sites/3081/2020/05/First-Amended-Complaint-McD-Chicago.pdf>; *id.* (Burger King Restaurants franchise agreement, Exhibit D1 to Franchise Disclosure Document, ¶ 5(b)(2)); *id.* (Taco Bell franchise agreement, Exhibit B-1 to Franchise Disclosure Document, Sec. 5, ¶¶ 3-4).

⁶³ National Institute for Occupational Safety and Health, *Violence in the Workplace*, Current Intelligence Bulletin 57, Pub. No. 96-100, July 1996DHHS (NIOSH), <https://www.cdc.gov/niosh/docs/96-100/default.html>.

⁶⁴ Hart Research Associates, *supra* n. 14.

⁶⁵ Deborah Berkowitz, *supra* n. 13.

⁶⁶ Fight for \$15 and a Union, *supra* n. 12 at 4, <https://fastfoodjusticeahora.com/violencereport/>.

⁶⁷ *Id.*

⁶⁸ Complaint to CalOSHA, June 26, 2022, Taco Bell, 2255 Telegraph Ave. Oakland, CA 94612 (on file with SEIU).

⁶⁹ Complaint to CalOSHA, Sept. 27, 2022 - Violence, Taco Bell, 2255 Telegraph Ave, Oakland (on file with SEIU).

⁷⁰ *Id.* at 1.

⁷¹ *Id.* at 3-4.

injuries to myself and my coworkers,” recalls a Taco Bell cook.⁷² It began with a woman who, after having to wait to use the bathroom, emerged from the restroom upset, “yelling and swearing at all of us. ... [T]he woman walked around the store pulling all the chairs from the tables to the floor.” Then, when asked to leave, she stormed into the back work area, grabbing and throwing things at workers. She then let a man into the locked store who punched a manager in the mouth and threw the cash registers off the counter. He then left and threw a rock through the store’s glass door, injuring the cook in the shoulder. Shortly afterward, a third attacker popped the tires on four workers’ cars.⁷³ The three attackers barricaded restaurant employees inside, leaving only when police arrived. “My hand was really swollen and I couldn’t lift my arm,” the cook recalled. “Our manager asked us to stay at work, but we all went home in fear.” The next day a different manager called the injured cook – not to ask how she was doing or offer mental health or medical support but to ask her to come in to work.⁷⁴

Taco Bell management does not provide training on how to handle threats and violence or any real support after violent incidents, the workers state.⁷⁵ After a customer tried to rob one worker at knifepoint, “upper management ... gave me a phone number I could call for mental health services, but they asked more questions about the money and how much was taken from the register than they did about my safety and well-being.”⁷⁶

Workplace injuries: In a national survey, nearly nine in 10 fast-food workers reported being burned, cut, hurt lifting heavy items, injured by slipping and falling or otherwise injured at work,⁷⁷ and fast-food workers continue to complain that managers fail both to prevent workplace injuries and to make sure workers get adequate treatment. Part of the problem is management pressure to work quickly and failure to schedule sufficient employees to handle the workload. Over half of fast-food workers surveyed said these constituted a serious problem, contributing to the risk of injuries. That situation has likely intensified since the 2015 survey, given the restaurant industry’s chronic understaffing, which has continued even as the pandemic has waned.⁷⁸ Here is one example of the impact of the industry’s failure to adequately address worker safety:

A delivery driver for Papa John’s Pizza in Lynnwood, Calif., recalls that when he sliced his thumb opening a box with a knife, a manager said, “Don’t cry about it,” and brought me a stapler to staple my thumb back together. Then he got me a band aid. He didn’t send me to the doctor or give me any information about Workers’ Comp or how to get medical help. I had to continue working while I tried to keep pressure on my thumb. It continued to bleed a lot for a week. I lost

⁷² *Id.* at 5.

⁷³ *Id.* at 5-6.

⁷⁴ *Id.* at 6.

⁷⁵ Complaint to CalOSHA, *supra* n. 68 at 3.

⁷⁶ *Id.*

⁷⁷ Hart Research Associates, *supra* n. 14.

⁷⁸ *Restaurants added nearly 70,000 jobs in February*, National Restaurant Association, March 10, 2023, <https://restaurant.org/research-and-media/research/economists-notebook/analysis-commentary/restaurants-added-nearly-70,000-jobs-in-february/>.

feeling and sensation in that finger.”⁷⁹ The driver also injured his ankle twice while delivering pizzas, cut his head when a box fell on him and injured his elbow, banging it on a metal counter when carrying a box. “I still have bad pain in that joint,” the worker reports. “It feels like an electric shock.”⁸⁰

COVID-19 failures: During the COVID-19 pandemic, fast-food employers exposed their employees and the public to sickness and death from the virus. As documented in some 1,800 complaints to state and federal safety and health agencies, fast food employers failed to provide safety equipment, required employees to work while sick with COVID; and refused to provide sick pay and/or quarantine pay.⁸¹ A study of restaurants in seven California counties found that nearly nine in 10 restaurants early in the pandemic were not complying with at least five of 16 elements of guidance for preventing workplace transmission of the virus.⁸² Unsurprisingly, the virus spread from restaurant to restaurant, sickening hundreds of employees and their family members.⁸³ Food and agriculture workers experienced a 40 percent increase in death rate, according to a study by researchers at the University of California San Francisco – the biggest increase of any sector. The death rate for Latino food/agriculture workers rose 59 percent.⁸⁴

One infamous example was an Oakland McDonald’s where, instead of masks, management at first offered workers a box of dog diapers.⁸⁵ When the store finally provided actual masks, managers required workers to wear the same mask for days while working in close quarters and to come in to work even if experiencing fevers, coughs, aches and other COVID-19 symptoms.⁸⁶ According to the Oakland workers’ complaint to the Alameda County, Calif., Public Health Department:

“There are posters explaining social distancing, and one manager has talked about it, but in practice, nothing about the way the restaurant operates was altered to allow us to maintain it. There are as many as 11 people at one time in a small space. We move around a lot and are always in contact, always very close to each other. Managers have not said anything about this.”⁸⁷ As one worker stated, “for a month I have had co-workers with symptoms at work and coworkers who were missing for weeks at a time, but I didn’t hear from management that anyone was sick with Covid-19 until Sunday, May 24. ... On Monday, May 18, I felt sick at work, I had a headache, my legs and feet ached and I felt very hot. I told my manager ... that I felt sick

⁷⁹ Complaint to CalOSHA, March 31, 2023, Papa John’s Pizza, 11123 Long Beach Blvd, Lynwood CA 90262, at 2 (on file with SEIU).

⁸⁰ *Id.* at 2.

⁸¹ Lance Williams, *supra* n. 16.

⁸² Rajiv Bhatia and Martha Dina Argüello, *supra* n. 16.

⁸³ Lance Williams, *supra* n. 16.

⁸⁴ Yea-Hung Chen et al., *Excess mortality associated with the COVID-19 pandemic among Californians 18–65 years of age, by occupational sector and occupation: March through October 2020*, medRxiv, Jan. 22, 2021, <https://doi.org/10.1101/2021.01.21.21250266>.

⁸⁵ Lance Williams, *supra* n. 16.

⁸⁶ Emergency Public Health Complaint re: McDonald’s, 4514 Telegraph Avenue, Oakland, Calif., May 28, 2020 (on file with SEIU).

⁸⁷ *Id.* at 2.

and I wanted to go home, and that wearing the mask made me feel worse because it was too hard to breathe. He said, 'There is no one to cover for you, just pull the mask down,' so I did, and I continued to work sick.”⁸⁸

After the worker’s 10-month old son developed a 104-degree fever and convulsions, the baby and the worker tested positive for Covid-19. “I started crying and I said to [the manager] that I was worried about my son, that it could turn out bad, and she said, ‘It’s fine.’ I started crying harder because she said it was fine and it is not fine. The managers at the store never told me to quarantine myself.”⁸⁹

This is not an isolated example: An SEIU survey of California fast-food workers found that 90 percent had difficulty obtaining masks, and one-fifth worked while sick either because their employer did not provide paid sick leave or because they feared discipline if they called out.⁹⁰ California fast-food workers filed 123 complaints about violations of Covid safety protocols. And fast-food franchises continued to fail to protect workers and the public long after the pandemic’s chaotic initial weeks and months.

In summary, as our evidence shows, franchisor control over working conditions in fast-food restaurants takes a toll on fast-food workers – from wage theft and child labor to sexual harassment and assault to unsafe workplaces. The problem is worse than the sum of the parts, however: Franchisors’ squeeze on their franchisees’ profitability ensures that these ills reinforce each other. Franchisees fail to fix broken equipment because they feel they cannot afford it, exposing employees to danger. Workers often report excessively high temperatures in restaurants because air conditioning units are chronically broken. And broken A/C prompted management at one restaurant to leave a door open for ventilation at a restaurant that had recently experienced a break in, potentially exposing workers to violence.⁹¹ A broken headset contributed to an incident where a customer pulled a gun, angered that a worker could not hear an order. The worker also describes climbing onto a chair while seven months pregnant to get ice out of the store’s only working ice machine, which was higher than she could reach, when the other ice machine was broken.⁹² Franchisees would be better able to address the dangers posed by broken equipment if franchisors were extracting less from franchisees and from workers.

Similarly, short staffing – which is due in part to the low wages franchisees pay because labor is one of the few costs they directly control – contributes to wage theft as managers require workers to skip breaks because there is nobody to cover them.⁹³ Short staffing, like broken equipment, can also provoke

⁸⁸ *Id.* at 3.

⁸⁹ *Id.*

⁹⁰ Lance Williams, *supra* n. 16.

⁹¹ Complaint to California Labor Commissioner, Dec. 8, 2021, McDonald’s, 1435 S Winchester Blvd, San Jose CA 95128 (on file with SEIU).

⁹² Complaint to CalOSHA, April 26, 2022, Jack In The Box, 4849 Madison Ave, Sacramento CA 95841 (on file with SEIU).

⁹³ Complaint to California Labor Commissioner, Feb. 5, 2022 - Wage Theft, Subway, Campbell & San Jose (on file with SEIU).

customers to attack workers when they make mistakes under pressure⁹⁴ as well as expose workers to robberies when working alone.⁹⁵ In short, abuse of the franchise model ensures that money flows up to the franchisors while misery flows down to franchisees and workers.

Conclusion

The harms experienced by workers in fast-food franchises illustrate the human cost of myriad problems affecting consumers – including workers, franchisees, and fast-food customers – in franchised businesses. These problems are rooted in the exploitative relationship that has been allowed to exist between franchisors and franchisees, under which franchisors systematically impose numerous restraints, unfair contract terms, and arbitrary or unfair requirements or decisions on franchisees – for franchisors’ own profit and at the expense of franchisees and their workers. However, it is clear that many of the practices that characterize these relationships may be unfair or harmful to fair competition, and we believe it is long past time that such abusive franchisor practices end. We therefore urge the Commission to utilize the full range of its authority under Section 5 to examine the practices we have described and act aggressively to reform a business system that affects such a large segment of our economy and so many millions of workers.

⁹⁴ Complaint to California Labor Commissioner, Oct. 30, 2021, McDonald’s, 585 Tully Rd, San Jose, CA 95112 (on file with SEIU).

⁹⁵ Complaint to California Labor Commissioner, *supra* n. 93.