

The 12 days of California Labor & Employment Series – Day 8: No No’s for Food Delivery Platforms

2 min read

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In the spirit of the season, we are using our annual “12 days of the holidays” blog series to address new California laws and their impact on California employers. On this eighth day of the holidays, my labor and employment attorney gave to me: eight maids a-milking and AB 286.

Most of us have likely utilized one or more food delivery platforms during the pandemic. Food delivery platforms experienced a massive uptick in use throughout the pandemic. When the pandemic began, and food delivery platform usage increased, there was an issue with a lack of regulation. Restaurants had concerns over pricing, quality of their food upon delivery, voluntary participation with a food delivery platform, and profitability. Based on these concerns, the Food Delivery Act of 2020 was enacted, effective January 1, 2021. AB 286 expands the Food Delivery Act by creating additional specifications that food delivery platforms must adhere to and follow. AB 286 defines a food delivery platform as an online business that acts as an intermediary between consumers and multiple food facilities to submit food orders from a consumer to a participating food facility, and arranges for the delivery of the order from the food facility to the consumer.



As of January 1, 2022, a food delivery platform cannot 1) charge any customer any price for food or beverage that is higher than the price posted on the food delivery platform’s internet website by the food facility at the time of the order; and 2) retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity for a delivery order shall be paid by a food delivery platform, in its entirety, to the person delivering the food or beverage. Any tip or gratuity for a pickup order shall be paid by a food delivery platform, in its entirety, to the food facility. This

update protects both the food facility/restaurants and delivery drivers. It ensures that the food facilities are the ones to set their prices. The food delivery platform is not allowed to charge more to increase their revenue.

Further, a food delivery platform shall disclose to the customer as well as to the food facility an accurate, clearly identified, and itemized cost breakdown of each transaction, including, but not limited to:

- Purchase price of the food and beverage
- A notice, if applicable, that the food delivery platform charges a fee, commission, or cost to the food facility unless the food facility directs that the food delivery platform discloses to customers the delivery fee charged to the food facility and each fee, commission, or cost charged to the food facility
- Each fee, commission, or cost charged to the customer by the food delivery platform
- Any tip or gratuity

This requirement ensures that the customer is well aware of who they are paying and ensures that any tip or gratuity provided is directed to the correct person or facility.

What does this mean for employers or to the gig economy? For employers, specifically restaurants, you should set your prices and monitor your receipts to ensure you are receiving the proper tip or gratuity. Employers also need to ensure proper payment for workers for any tips and gratuities and ensure compliant wage records. For gig economy participants, ensure you are paying your independent contractors correctly. [Remember AB 1003 and wage theft?](#) That law applies to independent contractors and could create a serious issue if payment is inaccurate. You should also update your operational systems for charges and required itemization to prevent any compliance mistakes.

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Topics

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