

The Tasting MENU

APPETIZERS

Milking It: Novel ADA Theories Create Risks for Restaurant Substitution Fees

Restaurants frequently charge higher fees to substitute cow's milk for non-dairy alternatives such as soy or almond milk. Consumers recently challenged this practice on the grounds that it amounts to disability discrimination against those with lactose intolerance in *Garland v. Dunkin Donuts LLC*, No. 23-cv-06621 (N.D. Cal.). While the trial court granted Dunkin's motion to dismiss, holding that the consumers' lactose intolerance *as alleged* did not amount to a disability under the ADA, the court commented that a milk allergy *could* qualify as a disability under the ADA and allowed consumers a chance to allege more facts showing they have a qualifying disability. Restaurants should consider their pricing of non-dairy alternatives—as well as other substitution fees for items that accommodate food intolerances—in light of this new risk. Contact [Abby Meyer](#) for more details.

From Sole to Bowl: U.S. Reels in Tariffs, Dishing Out Higher Costs

The U.S. Government is reimposing tariffs on limited food and related equipment imports from China effective June 14, 2024. These costs will inevitably trickle down from suppliers to distributors to restaurants. Specifically, tariffs will resume on imports of Alaskan sole (yellowfin, rock, or flathead) packaged in China, and bamboo plates, bowls, and cups and certain refrigerators manufactured in China. More on this topic can be found [here](#). Contact [Lisa Mays](#) for more details.

State Beef with “Lab-Grown” Meat

In 2023, the US Department of Agriculture approved two petitions to sell lab-grown meat to American consumers. Yet, in May 2024, Florida and Alabama drew a line in the sand, or rather, the farm, and signed bills into law banning lab-grown meat in their states. Under both states' bans, selling or holding for sale cultivated meat is a misdemeanor, punishable by jail time and a fine. While Arizona and Tennessee consider enacting similar legal measures, Florida and Alabama are the first to issue such bans. These bills will not impact plant-based meat alternatives, but the laws and their influence on other states may impact animal-friendly restaurants and companies currently seeking the USDA's approval to sell lab grown meats. Sheppard Mullin is available to counsel on how these laws might impact your business. Contact [Ava Habibian](#) for more details.

Restaurant Work | Task Force

The Sheppard Mullin Restaurant Task Force is a vertically integrated team of attorneys who coordinate their institutional knowledge of the restaurant industry and legal expertise to provide seamless representation. The team delivers a full menu of resources on matters that particularly affect the restaurant industry, including counseling clients through acquisitions, joint ventures and fund formation, franchise, supplier, and distribution agreements, data privacy, labor and employment, financing, bankruptcy and restructurings, ADA, and lease issues. The Tasting Menu is a collection of emerging issues we see impacting this industry.

MAINS

PAGA Reform May Curb Appetite For Litigation

After being plagued for two decades with claims brought under the California Private Attorneys General Act (“PAGA”), recent reforms mean employers may now see a decrease in (though not an elimination of) such claims. PAGA authorizes aggrieved employees to bring a civil action against an employer to recover penalties on behalf of themselves and other employees. On July 1, 2024, Governor Newsom signed PAGA reform into law. The reform includes: increasing the employee share of recovery (previously 25%, now 35%); increasing penalties for malicious employer conduct; capping employer liability where the employer attempted to comply with the Labor Code before receiving a PAGA notice (15% cap on penalties sought) and after receiving a PAGA notice (30% cap); reducing penalties for short-lived or technical violations; equalizing penalties for employers who pay on a weekly as opposed to a bi-weekly basis; increasing cure opportunities; providing early resolution opportunities; and codifying that a court has discretion to adjust the amount of penalties and limit the scope of claims presented at trial to allow for manageability. Additionally, the reform indicates that a representative plaintiff, in order to have standing to bring a PAGA claim, must have experienced all of the alleged PAGA violations within the 1-year statute of limitations. PAGA reform is considered effective as of June 19, 2024 and applies to lawsuits, including LWDA notices, initiated on or after June 19, 2024. Restaurants should familiarize themselves with this new law and evaluate their wage and hour compliance, including opportunities to cure. Contact [Kristi Thomas](#) and [Alice Carranza](#) for more details.

California Legislature Eighty-Six's “Junk Fee Ban,” But Relief May Be Temporary

On the eve of the July 1, 2024 deadline for businesses to comply with California's so-called junk fee ban (“SB 478”), Governor Gavin Newsom signed into law SB 1524, which allows restaurants, bars, and other food services businesses that sell directly to consumers to continue using surcharges so long as such fees are “clearly and conspicuously” displayed. As written, SB 478 makes it illegal for businesses to use “drip pricing,” a practice where the business advertises or lists a price for a good or service that is lower than the actual price consumers will have to pay. The California Attorney General's Office (“AG”) [interpreted](#) SB 478 to prohibit common food services practices—such as imposing a minimum gratuity percentage for large parties/banquets. SB 1524 was passed to clarify that such practices are not banned so long as they are disclosed in advance to consumers. This win may be short-lived, though, as the Federal Trade Commission and multiple states consider similar bans. We will be tracking the progress of these laws. Contact [Joy Siu](#) for more details.

DESSERTS

Food service experience? We've lived it. Brooke Purcell, a Labor & Employment partner, spent her childhood watching her father manage his hospitality businesses. She spent her weekends and holidays at his restaurants, bars, and nightclubs during off-hours, helping where she could and learning as much as possible from her dad. Now, Brooke defends companies in employment actions in federal and state court and before administrative agencies. She also regularly counsels clients regarding compliance with California wage and hour and other employment laws. Brooke can be reached at bpurcell@sheppardmullin.com.

Restaurant Task Force



Abby Meyer
Food & Beverage Industry Team Leader
Business Trial
Orange County
ameyer@sheppardmullin.com



Kristi Thomas
Restaurant Task Force Leader
Labor and Employment
Orange County
kthomas@sheppardmullin.com



Joy Siu
Tasting Menu Editor
Antitrust and Competition
San Francisco
jsiu@sheppardmullin.com



Khirin Bunker
Business Trial
Los Angeles
kbunker@sheppardmullin.com



Stacy Dominguez
Business Trial
Orange County
sdominguez@sheppardmullin.com



James Gatto
Intellectual Property
Washington, D.C.
jgatto@sheppardmullin.com



Robert Gorzelany
Real Estate, Energy, Land Use &
Environmental
New York
rgorzelany@sheppardmullin.com



Derek Havel
Labor and Employment
Los Angeles
dhavel@sheppardmullin.com



Sascha Henry
Business Trial
Los Angeles
shenry@sheppardmullin.com



Lindsay Ferguson
Food & Beverage Industry Team Leader
Corporate
Houston
lferguson@sheppardmullin.com



Ava Habibian
Tasting Menu Editor
Business Trial
Orange County
ahabibian@sheppardmullin.com



Kelly Hensley
Labor and Employment
Los Angeles
khensley@sheppardmullin.com



Greg Labate
Labor and Employment
Orange County
glabate@sheppardmullin.com



Steve Peterson
Corporate
Houston
speterson@sheppardmullin.com



David Poell
Business Trial
Chicago
dpoell@sheppardmullin.com



Patrick Quine
Corporate
Washington, D.C.
pquine@sheppardmullin.com



Stacey Rosenberg
Finance and Bankruptcy
Los Angeles
srosenberg@sheppardmullin.com



Olivier Theard
Real Estate, Energy, Land Use &
Environmental
Los Angeles
otheard@sheppardmullin.com



Chante Westmoreland
Intellectual Property
Houston
cwestmoreland@sheppardmullin.com