

# Management Alert



## That's The Last Straw: California Places New Restrictions on Restaurants

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On September 20, 2018, California Governor Jerry Brown signed into law AB 1884 and SB 1192, which prohibit certain restaurants from offering plastic straws and restrict the default beverage in kid's meals to water or milk. These restrictions go into effect on January 1, 2019. Restaurants that fall within the scope of these laws are subject to statutory penalties including fines and potential class action exposure under California Business and Professions Code section 17200.

**AB 1884** prohibits a "full-service restaurant" from providing single-use plastic straws to consumers unless requested by the consumer. A "full-service restaurant," is defined as an establishment with the primary business purpose of serving food, where food may be consumed on the premises, and where employees of the establishment take the following actions: (1) escorting the consumer to an assigned eating area; (2) taking the consumer's food and beverage order once seated; (3) delivering the consumer's food and beverage order directly to the consumer; (4) delivering additional requested items to the consumer; and (5) delivering the check to the consumer at the assigned eating area. Accordingly, the ban does not apply to fast food restaurants, take out restaurants, and similar eateries where employees do not take the actions outlined above. The ban also does not apply to businesses that provide non-plastic straws made from materials such as paper, pasta, sugar cane, wood, or bamboo.

The provisions set forth in AB 1884 will be incorporated into California's existing Retail Food Code, which establishes uniform health and sanitation standards for "retail food facilities," as defined. The Retail Food Code also provides for the regulation of relevant facilities by California's State Department of Public Health. First and second violations of these provisions will result in a Notice of Violation, and any subsequent violation will be punishable by a fine of \$25 for each day the restaurant is in violation, not to exceed an annual total of \$300.

AB 1884's legislative history builds on California's long-standing policy of regulating environmental impacts and developing concerns relating to plastics and microplastics. The Assembly noted in its Analysis several recent studies discussing the amount of plastic in the ocean, which currently stands at an estimated 1.8 trillion pieces of plastic and (rapidly) counting. The Assembly further considered the effects of plastics in the ocean, which degrade and eventually turn into microplastic due to ultraviolet radiation and other photo-degradation. According to the Assembly, the dangers of microplastics are not limited to aquatic life; through various processes, microplastics can make their way into the human food chain and water supply.

**SB 1192** requires restaurants that sell a "children's meal" with a beverage included to provide as the default beverage one of the following: water, sparkling water, unflavored milk, or a nondairy milk alternative. Similar to AB 1884, this law allows restaurants to sell alternative beverages upon request by the customer. However, unlike AB 1884, the provisions in SB 1192 apply to a much broader set of restaurants defined in the statute as "a retail food establishment that prepares, serves, and vends food directly to the consumer." Thus, restaurants exempt from the single-use plastic straw ban, are still subject to this

restriction if they offer a “children’s meal.” A “children’s meal” is defined as a combination of food items and a beverage, or a single food item and a beverage, sold together at a single price, primarily intended for consumption by a child.

A first violation of these provisions will result in a Notice of Violation. Subsequent violations will be punishable by fines; \$250 for a second violation and \$500 for a third violation.

The legislature wrote its findings into the text of the statute, which clearly outline its intent to curb child obesity. In fact, the legislature expressly stated, “it is the intent of the Legislature to support parents’ efforts to feed their children nutritiously by ensuring healthy beverages are the default options in children’s meals in restaurants.” This statement is based on the legislature’s findings that American children eat 25% of their calories at fast food and other restaurants outside of the home, and that children consume nearly twice as many calories when they eat out (compared to what they would eat at home).

SB 1192 was proposed as a result of the legislative findings on steadily increasing obesity rates. In particular, the California legislature found that from 1990 to 2016, the obesity rate in California increased by 250%, and that recent trends suggest a parallel increase in obesity among children. The text of the law states that, in 2009, 10.9% of children ages 0-5 and 12.2% of children ages 6-11 were overweight, and these numbers rose in 2015 to 13.7% of children ages 0-5 and 16% of children ages 6-11. The legislature further explained that obese children are at least twice as likely as nonobese children to become obese adults and are at a greater risk for adverse health conditions including, but not limited to the following: type 2 diabetes, heart disease, stroke, high blood pressure, high cholesterol, certain cancers, asthma, low self-esteem, depression, and more.

The law was also proposed as a solution to the “serious economic costs” associated with obesity-related health conditions. The legislature found that these costs amount to a medical burden of about \$147 billion annually in the United States, accounting for almost 10% of all federal medical spending and borne primarily by taxpayers through government-sponsored vehicles like Medicare and Medicaid.

## Takeaways

Given the nearing effective date for both AB 1884 and SB 1192, restaurants should review their existing practices to make sure they are in compliance with both laws prior to January 1st. Business owners should be mindful of these new laws to avoid fines, and more importantly, potential class action lawsuits. Fortunately, for many restaurants, implementation of compliant policies is likely to be quick and painless. At a minimum, restaurants should ensure that the default option for any kids’ meal is a permissible choice of either milk or water and that employees do not offer consumers plastic straws. Restaurants may also consider switching to plastic straw alternatives, e.g., paper, pasta, sugar cane, wood, or bamboo. And of course, as with any change in policy, restaurants subject to these provisions should seek counsel regarding compliance.

You can read the full bills at the following links: [AB 1884](#) and [SB 1192](#).

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