



## WHAT'S HAPPENING RIGHT NOW

### Labor Dominates Senate Conversation

The PRO Act and labor relations remain at the forefront of the Senate HELP Committee's focus. Although the PRO Act is unlikely to advance, labor union leaders and former Starbucks CEO Howard Schultz testified at hearings designed to frame the committee's pro-labor agenda. [Coming Up Next:](#) The Committee will take up President Biden's nomination of Julie Su for Labor Sec. The restaurant industry has serious concerns about the nomination and is vocal in its opposition.

### Momentum Builds for Credit Card Competition Act 🇺🇸

In 2022, credit card fees soared 20%. Restaurants are renewing efforts supporting the *Credit Card Competition Act*, which requires large banks to allow at least two unaffiliated processing networks on credit cards they issue. [What This Means:](#) Restaurants will be able to choose how to route their credit card transactions, driving down processing costs and passing those savings on to diners through lower menu prices.

### Non-Competes Potentially on Chopping Block 🔪

The Federal Trade Commission (FTC) [is proposing](#) to end non-compete contracts for employees and employers. While restaurants rarely use non-compete agreements for most of their workforce, some non-competes can protect trade secrets at the executive and management levels. The Association and Restaurant Law Center will file joint comments on April 19. [What this Means:](#) If the FTC finalizes the rule, non-compete contracts for existing and former employees would be ended.



## WHAT JUST HAPPENED

### FDA Wants Restaurants to Improve Traceability Record-Keeping

The [FDA](#) recently issued a final rule on food traceability designed to facilitate faster identification of potentially contaminated food. Under this final rule, restaurants will now be required to maintain specific records for foods on the Food Traceability List. [Watch webinar.](#)

### Restaurants Applaud Tipped Employee Protection Act 📄

Rep. Womack and Sen. Braun [reintroduced](#) the "Tipped Employee Protection Act" to clarify the 2021 DOL Dual Jobs Rule, which complicates how restaurants compensate tipped employees. The bill addresses uncertainty created by the rule and prevents changes by DOL regulation.

### Severance Agreement Clauses Banned by NLRB

Employers may not include non-disparagement clauses nor non-disclosure of severance agreement terms when separating from non-supervisory employees. [What This Means:](#) NLRB is "doubling down" on this ruling by applying it retroactively to eliminate severance agreements already in effect.



## ON THE HORIZON

### Bolster Food Price Stability in Farm Bill 🚜

As Congress works on the 2023 Farm Bill, the Association is advocating for policies that lower food costs, enhance supply chain resiliency, expand restaurant access, and help restaurants reduce waste and donate more food.

### Data Privacy May Head to Senate Floor 🗳️

Children's online privacy is gaining traction. A Senate floor vote could take place in June on the [Kids Online Safety Act](#) and the [Children and Teens Online Privacy Protection Act](#), impacting how customers use mobile apps and participate in loyalty programs. Reintroduction of the [American Data Privacy and Protection Act](#) is expected this year.

### Joint Employer Expanded by New Proposal

The NLRB proposed a radical expansion of joint employer, triggering potential liability for most contractual relationships in restaurants between franchisees, suppliers, vendors, contractors, and subcontractors. The Association and RLC urge NLRB to [maintain its current standard](#), with a final rule is expected by August 2023.

### Business Interest Expensing Legislation to Be Introduced

Restaurant operators are concerned about the limitation of business interest expensing, related to depreciation and amortization, and anticipate new bipartisan legislation. Congressmen Adrian Smith (R-NE) and Joseph Morelle (D-NY) may introduce the "EBITDA Fix" as early as April 2023.



## Regulatory Calendar and Restaurant Response on Federal Rules

Restaurants are taking action on an unprecedented rulemaking effort at by federal agencies. See below for the current rules affecting restaurant menus, operations, financial compliance, food prices, and labor.

Timeline	Federal Rule	Restaurant Response	DC Insights
Final Rule Expected Spring 2023	SEC Climate Disclosures ( <a href="#">filed comments</a> )	The food supply chain relies on independent farmers and producers, which cannot reliably collect SEC data.	Public feedback may be helping to shift onerous parts of the rule. <a href="#">What to Watch:</a> SEC Chair will appear before a GOP-led House panel on April 18.
Final Rule Expected Summer 2023	NLRB Joint Employer ( <a href="#">filed comments</a> )	Restaurants oppose this expansion of Obama-era rule which challenges franchisees and hikes liability risk.	The NLRB told a US District Court it expects to release the final rule in August 2023. <a href="#">Go deeper.</a>
Final Rule Expected Summer 2023	DOL Independent Contractor ( <a href="#">filed comments</a> )	New standard reverses previous restaurant- supported distinction established in 2021.	Independent contractor classification is a top concern for lawmakers reacting to President Biden's nomination of Julie Su for Labor Secretary. <a href="#">More from California.</a>
Proposed Rule Expected Summer 2023	DOL Overtime Proposed Rule	If this rule escalates to \$82K/year, managers earning under that amount receive 1.5X salary for time above 40 hours/week.	A recent NYT <a href="#">story</a> portrayed employee "manager" classification in a negative light and cited several restaurants.
Final Rule Expected Summer 2023	EPA's Renewable Fuel Standard Reset Rule ( <a href="#">filed comments</a> )	The RFS contributed to high food prices, as food is used for fuel, and restaurants want to lower the RFS.	While policymakers are concerned about the cost of food, the price of fuel is also a major factor in this decision- making process.
ANPR Issued August 2022	FTC Data Security & Surveillance ANPR ( <a href="#">filed comments</a> )	Customer loyalty programs and smaller restaurant operators must be protected in any new federal standard.	Recent TikTok CEO <a href="#">hearing</a> underscores Congress' desire to regulate big tech and social media companies and their use of consumer data.
Released December 2022	NOAA Proposed Rule to expand Seafood Import Monitoring Program (SIMP)	Rule creates unworkable complexity for seafood suppliers, rising costs for restaurants and consumers.	Lawmakers are aware of supply chain disruptions and food price inflation, and restaurants echo this same message during farm bill negotiations.
Released January 2023	FTC Non-Compete Rule ( <a href="#">filing comments</a> )	Restaurants are concerned with a blanket ban on non- competes and will file comments in April 2023.	Pres. Biden mentioned non- competes for hourly workers at "burger joints," but the Association is only seeking to preserve this status for executive-level employees.
Finalized November 2022	FDA Food Traceability (previously commented)	We are increasingly concerned about burdensome recordkeeping requirements on restaurants.	Discussions are ongoing about legislative and legal actions to clarify the rule.

