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Texas to Require Restaurants to Educate Employees about Food Allergies¹

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By September 1, 2024, under Senate Bill 812, the Sergio Lopez Food Allergy Awareness Act (the “**Act**”), restaurants, retailers, and other food service establishments in Texas will need to display a poster for employees regarding food allergy awareness.

The number of Americans living with food allergies increased by roughly 50 percent in the last two decades.² With concerns over food allergies on the rise, Texas will now require food establishments to educate and train their employees about food allergies and the serious and life-threatening consequences that can result.³ Sergio Lopez, for whom the Act is named, died after eating a taco that employees repeatedly told him did not contain peanuts.⁴

Who is required to comply?

Food service establishments. The Texas Administrative Code defines a food service establishment as a food establishment, which is broadly defined with only limited exceptions.⁵ A food establishment can be any of the following, among others:

- A restaurant, retail food store, cafeteria, or caterer;
- An element of an operation such as a transport vehicle or central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted food establishment; or
- An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location, where consumption is on or off the premises, whether there is a charge for the food or not.⁶

What steps are required to comply?

The Act requires food service establishments to display a poster relating to food allergen awareness in an area regularly accessible to the food service establishment’s employees.⁷ The poster must include the following information:

- The risk of an allergic reaction to a food allergen;
- Symptoms of an allergic reaction;
- The major food allergens (currently milk, soybeans, fish, peanuts, shellfish, sesame, eggs, wheat, and tree nuts);
- Procedures for preventing an allergic reaction; and
- Appropriate responses for assisting an individual who is having an allergic reaction.⁸

The Act requires that the Texas Department of Health and Human Services (DSHS) collaborate with experts regarding food allergies to update the form and content of the poster as necessary to maintain consistency with FDA standards.⁹ The Act also establishes requirements that basic food safety education or training programs

HAYNES BOONE

include food allergen awareness information.¹⁰ State-issued examinations for issuance or renewal of a food manager certificate will also test for mastery of the information.¹¹

What is the compliance deadline?

September 1, 2024. DSHS will post a sample poster on its website no later than December 1, 2023, and food service establishments must display the poster by September 1, 2024.¹²

What else should you know about the new law?

The Act does not change any existing common law or statutory duty, nor does it create a private cause of action.¹³ The Act also prohibits any county, city, or public health district from adopting or enforcing any inconsistent or more stringent measure related to food allergens.¹⁴

¹ Prepared by Suzie Trigg and Kristi Weisner as of August 28, 2023, based on Senate Bill 812, the Sergio Lopez Food Allergy Awareness Act. This summary is not intended to constitute legal advice and interested parties should refer to the text of Senate Bill 812 at <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=88R&Bill=SB812>.

² See *Bill Analysis*, S.B. 812, 88th Reg. Sess. (Tex. March 27, 2023), <https://capitol.texas.gov/tlodocs/88R/analysis/html/SB00812I.htm>.

³ *Id.*

⁴ Steven Masso, *Mother Fights for Food Allergy Law After Son Dies Eating at Texas Restaurant*, THE HILL (July 13, 2023), <https://thehill.com/homenews/4094402-mother-fights-for-food-allergy-law-after-son-dies-eating-at-texas-restaurant/>.

⁵ TEX. ADMIN. CODE § 229.471(6).

⁶ *Id.* at § 229.471(5)(A–B).

⁷ TEX. HEALTH & SAFETY CODE § 437.027(a).

⁸ *Id.* at § 437.027(b).

⁹ *Id.* at § 437.027(a).

¹⁰ *Id.* at §§ 438.043(a)(1)(c); 438.0431(b).

¹¹ *Id.* at §§ 438.103(b).

¹² S.B. 812, 88th Reg. Sess. (Tex. 2023).

¹³ TEX. HEALTH & SAFETY CODE § 437.027(d).

¹⁴ *Id.* at § 437.027(e).