

California Labor & Employment Update: PAGA Reform

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By Deborah H. Petito



On July 1, 2024, Governor Newsom signed Senate Bill 92 and Assembly Bill 2288, amending The Private Attorneys General Act (PAGA). The amendments are effective June 19, 2024, but do not affect civil actions that were filed or cases where the required notice to the employer and the Labor Workforce Development Agency (“LWDA”) was submitted prior to June 19, 2024. The amendment was a compromise reached among Governor Newsom, business leaders and the unions to remove a measure to repeal PAGA from the November ballot. PAGA has been tough on businesses in California. While the amendments are helpful, businesses still need to be vigilant to avoid the penalties under PAGA.

PAGA was enacted in California in 2004, allowing employees to file lawsuits against employers for violations of the labor code on behalf of themselves, other employees, and the state of California. The law essentially deputizes employees to act as private attorneys general and to pursue civil penalties for violations that would typically only be enforceable by state labor agencies.

If an employee believes there has been a violation of the California Labor Code by their employer, the employee can then file a claim under PAGA. Claims can include a broad range of violations ranging from overtime to meal and rest breaks. Part of the penalties recovered are distributed to the state, with affected employees and their legal representation receiving the remainder.

The following summarizes the most significant changes to PAGA:

1. Individual Plaintiffs Must Have Suffered a Violation for Each Claim Made in their Complaint. There are several changes to PAGA, but the most significant for businesses is that a plaintiff be able to prove that they were subject to the specific PAGA violations upon which their complaint is based. Previously, a plaintiff, with one violation, could allege that the employer violated every section of the Labor Code. For example, if the plaintiff only suffered meal period violations, they cannot now bring an action for unpaid overtime. While this should limit some PAGA litigation and penalties, it will probably result in multi-plaintiff lawsuits, with employee plaintiffs alleging that they suffered differing violations.
2. Ability to Cure Once a Labor and Workforce Development Agency Notice is Received. The amendments expand when employers can cure violations when they receive the LWDA notice to avoid PAGA litigation. However, it is unclear in the new legislation exactly how much is needed to cure the violation and make the employee whole. What this provision does do is make it more important for employees to immediately contact counsel once they receive an LWDA notice to be able to audit their practices and attempt to cure them where allowed.
3. Early evaluation conference. The bill would also authorize an employer who employed at least 100 employees and who has been served with a summons and complaint asserting a claim under PAGA to file a request and participate in an early evaluation conference and to request a stay of court proceedings. The employer has the ability to cure violations by using this procedure. The requirements are very specific and must occur shortly after the service of any action on the

employer. As a result, employers should take care to avail themselves of this new procedure because if the employer cures the violations as set forth in the procedures for the Early Evaluation Conference, the penalties are capped at \$15 per employee.

4. **Penalty Reductions.** One of the most difficult elements of PAGA are the penalties. The new legislation: (a) revises the penalty structure and reduces it in certain situations; (b) encourages compliance with labor laws by capping penalties on employers who quickly take steps to fix policies and practices and make workers whole after receiving a PAGA notice, as well as on employers that act responsibly to take steps proactively to comply with the labor code before even receiving a PAGA notice; (c) creates new, higher penalties on employers who act maliciously, fraudulently or oppressively in violating labor laws; and (d) ensures that more of the penalty money goes to employees by increasing the amount allocated to employees from 25% to 35%.

Some examples of reduced penalties are as follows:

1. **Penalty Cap Reductions for Employers Who Take “All Reasonable Steps” to Comply with the Labor Code.** Penalties are reduced by 15% or 30% if a person accused of a violation has taken all reasonable steps to comply with the provisions alleged to have been violated in the required notice provided by the aggrieved employee. Reasonable steps may include, but are not limited to, any of the following:
 - (1) The employer conducted periodic payroll audits and took action in response to the results of the audit.
 - (2) The employer disseminated lawful written policies.
 - (3) The employer trained supervisors on applicable Labor Code and wage order compliance or took appropriate corrective action with regard to supervisors.

The amendments to PAGA state that whether the employer’s conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer and the nature, severity and duration of the alleged violations. The amendments further provide that the existence of a violation, despite the steps taken, is insufficient to establish that an employer failed to take all reasonable steps.

1. **Employers with Weekly Pay Periods.** The amendments reduce penalties for employers with weekly pay periods by one-half, effectively calculating penalties as if the employer had bi-weekly pay periods.

PAGA has significantly impacted labor law enforcement in the state, and these new reform measures will hopefully streamline the law even further. Employers should work with legal counsel to fully understand the details of this reform and any action that should be taken at this time. Given the new penalty structure, employers need to act quickly once they receive notice of a potential PAGA action. Quick action can help to reduce and/or eliminate some of the penalties.