

EMPLOYMENT LAW UPDATE

Relationship-Driven Results

July 2024

Legislative Update

California

PAGA Reform

On June 21, 2024, Assembly Bill 2288 (Kalra) and Senate Bill 92 (Umberg) were introduced proposing significant reforms to California’s Private Attorneys General Act of 2004 (“PAGA”). Governor Gavin Newsom signed these bills into law on July 1, 2024. The changes to PAGA have numerous provisions that benefit California employers. The legislation specifies that it is effective as of June 19, 2024, even though it was not signed until after that date, and applies to any proceedings initiated on or after that date.

Standing Required

Personal Experience: Plaintiffs/employees must personally experience the Labor Code violation(s) they are seeking to recover on a representative basis. Under the reformed PAGA, plaintiffs/employees must prove that they experienced the same Labor Code violations they seek to pursue on behalf of other employees.

Importantly, PAGA actions brought by nonprofit legal aid associations that have been involved in PAGA litigation for at least five years are exempt from the personal experience provision. In other words, the concept from *Huff v. Securitas Security USA Services, Inc.* of standing in PAGA actions will remain in actions brought by nonprofit legal aid associations (i.e., a plaintiff/employee merely needs to prove a single Labor Code violation to sue on any other Labor Code violation).

Statute of Limitations: The PAGA statute of limitations applies to the Labor Code violation that a plaintiff/employee must experience (one year) to have standing to bring the PAGA complaint.

Manageability: The new law explicitly enforces a court’s power to determine manageability over PAGA claims, and provides that a court may limit the evidence to be presented at trial or otherwise limit the scope of any claim filed to ensure that the claim can be effectively tried.

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Changes to Civil Penalties

This new law makes several changes to the civil penalties available under PAGA. As a reminder, under the initial iteration of PAGA, employers may be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each subsequent violation. PAGA's new penalty structure has changed.

15% Cap on Penalties: If an employer demonstrates that it "has taken all reasonable steps to be in compliance" with the law prior to receipt of a PAGA notice or a request for personnel records, then the available penalties are capped at 15% of the penalties sought. Examples of such reasonable steps include, but are not limited to: conducting periodic payroll audits and responding to the results of the audit; disseminating lawful written policies; training supervisors on California wage and hour compliance; and taking appropriate corrective action with regard to supervisors as needed. The court will exercise its discretion whether the 15% cap is applied.

30% Cap on Penalties: The new law provides that if an employer "has taken all reasonable steps to prospectively be in compliance with all provisions identified in the notice," then the available penalties are limited to 30% of the penalties sought. Similar to the 15% cap, this is a test to be applied by the trial court considering the totality of the circumstances.

Cap on Penalties for Wage Statement: Revised PAGA provides that if a wage statement violation pursuant to Labor Code section 226 does not cause harm to the plaintiff/employee, then the available penalty is capped at \$25. Moreover, the law confirms that penalties for Labor Code section 226 violations are the only penalties available for wage statement violations.

Limitations on the \$200 Penalty: The new law explicitly sets forth two circumstances in which the \$200 penalty may be considered. First, if there has been a court or agency determination within the last five years that the employer had an unlawful policy or practice that caused the violation. Second, if a court determines that the employer's conduct was malicious, fraudulent, or oppressive.

No Derivative Penalties: The updated PAGA law makes clear that penalties cannot be awarded for derivative claims.

Cap on Penalties for Isolated Errors: Where violations occur for less than 30 days, or four consecutive pay periods, the maximum penalty available is \$50.

Court's Discretion to Assess Penalties: A court's discretion to adjust the amount of penalties awarded based on the circumstances of the case has been codified in the new law.

Weekly Pay Periods: PAGA imposes penalties on a pay period basis. The new law provides that any penalty amount for an employer operating on a weekly pay period is reduced by half.

Employees Receive Greater Portion of Penalties Awarded: Previously, any award pursuant to PAGA was distributed in the ratio of 75% to the Labor &

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Workforce Development Agency (“LWDA”) and 25% to the affected employees. The new law increases the plaintiffs/employees’ share of the penalties to 35%.

New Cure Provisions

PAGA previously had a limited cure provision. The new law alters PAGA’s cure provision, allowing additional violations to be cured and new methods to cure.

Sections to be Cured: The new law allows violations of Labor Code section 226 (wage statements – previously, limited portions of wage statement violations could be cured), section 226.7 (failure to pay meal/rest period premiums), section 510 (overtime), and section 2802 (expense reimbursement) to be cured.

Options for Small Employers Wanting to Cure: Small employers (defined as under 100 employees) can notify the LWDA that they would like to cure the alleged violations. The LWDA will then arrange a settlement conference with the plaintiff/employee and employer in an attempt to reach an early resolution for the matter.

Options for Large Employers Wanting to Cure: Employers with more than 100 employees may file a request for a stay and Early Neutral Evaluation with the court. The court is then required to stay all discovery and responsive pleading deadlines. The neutral will then review the employer’s plan for curing violations, monitor compliance with the plan for a cure, and consider the employer’s efforts in limiting potential penalties. An employer may also file a motion for the court to approve a cure, even if the employee/plaintiff or neutral do not agree a cure has sufficed.

Injunctive Relief Is Now A Potential Remedy

Previously, the only available remedies under PAGA were civil penalties and attorneys’ fees. The revised PAGA adds injunctive relief as an available remedy. This permits PAGA plaintiffs/employees to seek injunctive relief in any circumstances where the LWDA could seek injunctive relief.

This is Pettit Kohn Ingrassia Lutz & Dolin PC’s employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Christine Clark, Jessica O’Malley, Nicole Allen, Haley Murphy, John Solis, Gabriella Kelly, Nia Perkins, Pouch Liang, Ethan Anderson, Amer Azizi, Michelle Perez-Yanez, or Paul Fricke at (858) 755-8500; or Brett Greenberg, Greg Feldman, Lisa Mallinson, Alysha Zapata, Arsalan AlNasir, Andres Uriarte, or Kimberly Horne at (310) 649-5772.



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