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Major PAGA Reforms Ease Burden on California Employers

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Employers in California have finally received some relief from one of the state's more arduous labor laws. On July 1, 2024, Governor Gavin Newsom signed into law two bills, Assembly Bill 2288 and Senate Bill 92, which substantially reform the state's Labor Code Private Attorneys General Act, or PAGA. As many California employers may already know, PAGA allows private individuals ("aggrieved employees") to bring actions on behalf of the state to enforce the California labor laws, which are typically reserved for the labor commissioner or attorney general. PAGA has been a powerful tool for employees and plaintiffs' attorneys because it offers them financial incentives under the guise of enforcement. The reforms provide employers with meaningful new options to address both threatened and actual PAGA claims, including the ability to significantly decrease their exposure to monetary penalties.

The reforms to PAGA are a compromise between legislators, labor organizations, and business groups following the introduction of a ballot measure in California to repeal PAGA. As part of the agreement on the new law, Governor Newsom announced that the proponents of the PAGA repeal ballot initiative had agreed to withdraw the measure from the November 2024 ballot.

The amendments will apply to PAGA actions filed on or after June 19, 2024, unless a plaintiff submitted the required pre-filing PAGA notice to the California Labor Workforce Development Agency (LWDA) prior to June 19, 2024. The key amendments that employers should know include:

1. Stricter Standing Requirements

Under the old law, a PAGA plaintiff who experienced only one alleged Labor Code violation nevertheless had the ability to seek penalties for myriad other alleged violations suffered by other employees. For example, previously, a plaintiff who experienced only unpaid overtime violations could assert and pursue PAGA claims not only for unpaid overtime violations but also for alleged meal and rest break violations, failure to reimburse expenses, and other Labor Code violations unrelated to unpaid overtime. Under the new law, with a narrow exception for certain nonprofit legal aid organizations, a PAGA plaintiff must personally experience each of the alleged Labor Code violations they are seeking to prosecute. Thus, if the plaintiff experienced only unpaid overtime violations, the plaintiff may pursue only PAGA

claims related to the unpaid overtime.

2. Statute of Limitations Clarity

Under the new law, a PAGA plaintiff must have personally experienced the alleged wage and hour violations within one year of filing their pre-lawsuit PAGA notice with the LWDA. In our view, this is declarative of existing law—although for years plaintiffs have argued that *Johnson v. Maxim Healthcare Services, Inc.*, 66 Cal.App.5th 924 (2021), allows PAGA plaintiffs to assert claims even if they did not experience violations during the relevant period. This change forecloses that argument.

3. Reduced Penalties

A. Caps When Employer Takes "All Reasonable Steps" to Comply

Under the new law, employers can significantly reduce their penalty exposure or avoid penalties altogether if they take "all reasonable steps" to comply with the Labor Code and cure any violations.

Penalties are capped at 15% if an employer, *prior to* receiving a PAGA notice or a request for employee records from the plaintiff, has taken "all reasonable steps to be in compliance" with the Labor Code. The amendments provide a non-exhaustive list of examples of "all reasonable steps" employers can take, which include, but are not limited to: conducting periodic payroll audits and taking action in response to the results of the audit; disseminating lawful written policies; training supervisors on Labor Code and wage order compliance; or taking appropriate corrective action with regard to supervisors.

Penalties are capped at 30% if the employer, *within 60 days* after receiving a PAGA notice, takes "all reasonable steps to prospectively be in compliance" with the Labor Code.

If the employer, either before or within 60 days of receiving a PAGA notice, takes "all reasonable steps" to comply with the Labor Code *and* cures a violation, the employer will not be required to pay a penalty for that violation. The amendments define "cure" to mean that "the employer corrects the violation alleged by the aggrieved employee, is in compliance with the underlying statutes specified in the notice … and each aggrieved employee is made whole." An employee is made whole when the employee is paid any owed unpaid wages due dating back three years from the PAGA notice, plus 7% interest, any liquidated damages required by statute, and reasonable attorney's fees and costs.

B. Limits on $200 Penalty for "Subsequent Violations"

Under the old law, the "default" PAGA penalty was $100 per aggrieved employee per pay period for the initial violation and $200 per aggrieved employee per pay period for each subsequent violation. Under the new law, the enhanced $200 penalty for subsequent violations can only be assessed if: (i) the LWDA or a court in the last five years has "issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful"; or (ii) a court determines that the employer's conduct was malicious, fraudulent, or oppressive.

C. No Stacking of Penalties for Derivative Violations

PAGA plaintiffs seeking penalties for alleged unpaid wages have traditionally also sought to recover derivative penalties (i.e., those based on the same underlying violation) for (i) untimely payment of wages during employment, (ii) untimely payment of wages upon separation, and (iii) wage statement violations. Most courts were not "stacking" penalties in this way, but plaintiffs would seek such penalties, which would have an impact on settlement value. The new law prohibits stacked derivative penalties for untimely payment of wages at any point unless the violation was willful or intentional, and for wage statement violations unless the violation was knowing or intentional.

D. Additional Changes to Penalties and Other Relief

The new law reduces PAGA penalties and makes additional changes in certain circumstances, including:

- Penalties for wage statement violations are reduced from $250 to $25 per aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement the information specified by subdivision (a) of Labor Code Section 226 (i.e., gross wages earned, total hours worked, etc.).
- Penalties for a violation that occurred due to an isolated, nonrecurring event are reduced from $100 to $50 per aggrieved employee per pay period if the event did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.
- Penalties assessed against employers who have weekly pay periods are reduced by one-half to place them on equal footing with employers who have biweekly or semimonthly pay periods.
- The distribution of PAGA penalties has been modified from 75% to the LWDA and 25% to the aggrieved employees to 65% to the LWDA and 35% to the aggrieved employees. A plaintiff may also now seek injunctive relief under PAGA.

4. Early Case Resolution

The amendments introduce new procedures for large and small employers who want to seek early case resolution.

A. Large Employers (at least 100 employees)

Employers with at least 100 total employees during the PAGA period, upon being served with a summons and complaint, may file a request for an early evaluation conference and to stay the court proceedings prior to or simultaneous with their initial appearance. The court will set a conference and order the parties to submit confidential statements containing certain information to an appointed neutral evaluator and each other. If the conference is successful (i.e., the neutral evaluator and the parties agree to a proposal for handling the alleged violations), the agreement is treated as a settlement. If the conference is not successful (i.e., either the neutral evaluator or the plaintiff does not agree that the defendant has cured the alleged violations), the employer may file a motion to request the court approve the cure and submit evidence showing correction of the alleged violations.

B. Small Employers (less than 100 employees)

Starting October 1, 2024, employers with less than 100 total employees during the PAGA period will have an additional option to preempt the filing of a PAGA suit. Within 33 days after receipt of a PAGA notice, small employers may submit to the LWDA a confidential proposal to cure one or more of the alleged violations. If the LWDA determines that the proposed cure is sufficient, the aggrieved employee will not be allowed to proceed with a civil action.

5. Enhanced Case Manageability

A frequent concern that arises in PAGA cases is how a court can effectively manage the case when there are multiple alleged Labor Code violations and hundreds or thousands of employees with different experiences and working conditions. The amendments expressly grant courts authority to limit both the scope of a PAGA claim and the evidence to be presented at trial to ensure that the claim can be effectively tried.

Takeaways

The amendments are intended to encourage and incentivize employers to be proactive and make good faith efforts to comply with the Labor Code. Employers should regularly review their employment policies and practices, including wage and hour policies and practices, and update them as needed. Employers should also conduct periodic payroll and timekeeping audits, provide applicable training to supervisors and managers, and strive to take the other “reasonable steps” outlined in the amendments to comply with the law. If an employer receives a PAGA notice, it should promptly review the notice and determine whether it makes

sense to utilize one of PAGA's new tools for early case resolution and/or curing violations. Following these tips can substantially decrease an employer's risk and potential exposure from a PAGA action.

Additional Information

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