Updates
July 11, 2024
California Significantly Amends Private Attorneys General Act

Over the years, California's Private Attorneys General Act of 2004 (PAGA) has provided a procedurally convenient means for employees to seek expansive penalties for employers' alleged violations of California's very technical wage-and-hour regulations.

Historically, such recovery has been available without employees having to establish actual injury, commonality, or standing in the same ways required in class or individual actions brought under different theories. On July 1, 2024, Governor Gavin Newsom signed into law Assembly Bill 2288 and Senate Bill 92, memorializing reforms to PAGA, which take the form of amendments to Labor Code sections 2699 and 2699.3, respectively. These changes come in the wake of a previously announced November 2024 ballot measure in California regarding PAGA and formalize the governor's June 18, 2024, promise of PAGA reform. The governor's office has promised that "[t]his legislation will strengthen worker protections, encourage employer compliance, streamline litigation processes, and avert a contentious ballot measure." What follows is a nonexhaustive overview of some of the major changes to PAGA.

Retroactivity. The legislation is not retroactive; it applies to PAGA notices and any resulting PAGA actions filed *on or after* June 19, 2024.

Manageability of claims. The legislation expressly provides that courts "may limit the evidence to be presented at trial or otherwise limit the scope" of any PAGA claim "to ensure that the claim can be effectively tried."

Stricter standing requirements. The legislation redefines the definition of an "aggrieved employee" who can bring a PAGA claim. Under the legislation (and with certain exceptions for nonprofit legal aid organizations as set forth in the law), to recover PAGA penalties through a civil action, an "aggrieved employee" bringing a PAGA claim must "personally suffer[]" each of the violations alleged during the PAGA one-year statute of limitations period.

Default penalty structure modifications. Prior to this legislation, PAGA set the default civil penalty for employers at $100 per aggrieved employee per pay period for an initial violation and $200 per pay period for each aggrieved employee for each subsequent violation. The new legislation revises the previous penalty structure, including but not limited to the changes below:

- *Penalty caps for good-faith compliance.* The new legislation allows for a cap of not more than 15% of the default penalties if, prior to receiving a PAGA notice or request for wage records, personnel records, and/or records signed by a requesting employee, employers show they have taken "all reasonable steps" to comply with the identified labor code provision(s). "All reasonable steps" may 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 applicable labor code and wage order compliance; and taking appropriate corrective action with regard to supervisors. Employers who, within 60 days of receiving a PAGA notice, prospectively take "all reasonable steps" (as defined in the legislation) to *comply* with all provisions identified in the notice may be entitled to a reduction of not more than 30% of the default penalties.
- *Clarification on application of elevated penalties.* The legislation provides criteria for imposing the $200 default penalties per aggrieved employee per pay period for subsequent penalties where: (1) within five years of the purported violation, there has been a court finding or California Labor and Workforce Development Agency (LWDA) determination that the employer's policy or practice giving rise to the violation was unlawful; or (2) the court determines the employer's conduct giving rise to the violation is "malicious fraudulent, or oppressive."
- *Limitation on "stacking" derivative penalties.* If aggrieved employees collect a civil penalty for the underlying wage violations, the legislation prevents aggrieved employees from recovering additional derivative civil penalties (*i.e.*, failure to pay wages upon termination, waiting time penalties, and failure to provide an itemized wage statement—unless willful, intentional—or the employer fails to provide any wage statement).
- *Reduced penalties for isolated violations.* If the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods, the civil penalty is $50 for each aggrieved employee per pay period.
- *Penalty reductions for employers with weekly pay periods.* The penalty recovered pursuant to this part shall be reduced by one-half if the employees' regular pay period is weekly rather than biweekly or semimonthly.

Inaccurate wage statement penalty modifications. Provided that the employer has issued itemized payroll statements during any of the pay periods at issue, reducing penalties for inaccurate wage statements from $250 per violation to $25 per violation where the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226 and for technical violations where the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer.

Cure provisions. The new legislation expands the types of violations that can be cured and introduces procedures for an early resolution.

Employers who employed at least 100 employees in total during the period covered by the proposed notice can request an early evaluation conference in court and a stay of the court proceedings, including pleadings and discovery. In requesting the early evaluation conference, the employer must include a statement regarding whether it intends to cure any alleged violations, the specific alleged violations it will cure, and allegations in dispute (if any). If the employer meets the requirements set forth in the law and the parties agree that all violations were cured during this process, the parties will submit a statement to the court that will be treated as a

proposed settlement. Communications during the early evaluation process will be privileged settlement communications that are not admissible to prove liability.

In addition, beginning October 1, 2024, employers who employed fewer than 100 employees in total during the period covered by a PAGA notice can submit a confidential proposal to the LWDA within 33 days of receipt of the PAGA notice of their plan to cure one or more of the alleged violations. The employer will then need to go through a multistep process with the LWDA to demonstrate which alleged violations have been cured. In the event the LWDA determines the violations have been cured, an employee may not pursue a civil action.

Allocation of penalties. Previously, 75% of civil penalties that a plaintiff recovered were directed to the LWDA, and aggrieved employees retained the remaining 25% of penalties. The legislation modifies the allocations by designating that 65% of penalties go to the LWDA and 35% to aggrieved employees.

Injunctive relief. The legislation allows plaintiffs to seek injunctive relief for violations.

Employer Next Steps

This legislation changes the landscape of PAGA litigation and provides employers with more tools to resolve alleged violations and limit exposure. The effectiveness of many of the changes to PAGA likely will depend on their interpretation and enforcement by the courts. California employers should stay informed and engaged with these developments to effectively manage their legal obligations and risks. Proactive measures, such as regular audits, policy updates, and training programs, will be important considerations in leveraging the "all reasonable steps" defenses provided by the new legislation. Employers should consult with experienced legal counsel to navigate PAGA changes.

Authors

Explore more in

Labor & Employment Corporate Law

Related insights

Update

February Tip of the Month: Federal Court Issues Nationwide Injunction Against Trump Executive Orders on DEI Initiatives

Update

New US Commerce Prohibitions on Chinese and Russian Connected Vehicle Technology