

Lawyer Insights

California's PAGA Reform Deal Tempers Worker-Friendly Law

To assess compliance with California law, and reduce potential exposure to PAGA, employers should consider reviewing their wage-and-hour policies, conducting periodic payroll audits, and assessing whether to provide additional supervisor training.

By Kirk Hornbeck
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In a welcome development for California employers, the California Legislature recently passed reforms to the controversial Labor Code enforcement statute known formally as the Labor Code Private Attorneys General Act of 2004 (PAGA). Business groups had backed an initiative eligible for the November ballot that they say would have repealed and replaced PAGA. The legislation, which Gov. Gavin Newsom signed into law July 1, 2024, was the product of a deal that caused the business groups to withdraw their measure. The reforms restore more traditional standing requirements, codify case management tools for judges, and implement a more employee-friendly penalty structure, among other things. These changes apply to PAGA actions brought on or after June 19, 2024.

California's Private Attorneys General Act

PAGA allows current and former employees to sue their employer for civil penalties and attorney fees based on Labor Code violations. Any recovery of civil penalties largely go to the state, and they do not preclude the recovery of individual damages and statutory penalties, which the employee gets to keep. PAGA cases have a number of peculiar characteristics, including that they can be brought as a "representative" action without needing to satisfy class action requirements. The amount of penalties at stake can be large.

PAGA's supporters say the law is needed as a backstop to understaffed and underfunded state regulators. PAGA's critics have argued the law provides the plaintiff's bar with a vehicle to extract large attorney fees awards from dubious and expensive lawsuits that provide little benefit to workers. They also argue the law has been unfairly weaponized against large, law-abiding companies with coffers to pay inflated settlements, rather than bad actors who knowingly disadvantage employees. And small business in California have expressed concerns that a PAGA suit could put them out of business.

Compromise Legislation

With the "repeal and replace" effort headed for the November ballot, both sides were incentivized to act quickly. On June 21, two bills designed to reform different parts of PAGA were introduced in the California legislature: AB 2288 and SB 92. Four days later, both bills were voted out of their respective committees, and they were approved by the Legislature on June 27. Newsom then signed the bills into law three days later. The compromise legislation ended the "repeal and replace" effort, at least for now.

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A Modified Legal Landscape

As amended, PAGA has a number of new features.

Under prior law, PAGA had a relaxed standing requirement that allowed workers to bring claims unrelated to harms they personally suffered as long as they claimed to have experienced at least one Labor Code violation. As amended, a PAGA plaintiff must have “personally suffered each of the violations alleged,” which brings PAGA in line with more traditional standing requirements.

The new law also changes PAGA's penalty structure. The general framework of a \$100 penalty per employee per pay period remains, but the new law reduces the penalty to \$50 for “an isolated, nonrecurrent event” in some circumstances. In addition, the heightened \$200 civil penalty for “subsequent violations” applies where either there has been a prior finding that the employer's policy or practice was unlawful or, now, if the employer's conduct was “malicious, fraudulent, or oppressive.” Moreover, many violations of the law governing paystubs will be reduced to \$25 provided that the employee can “promptly and easily determine” from the paystub alone the required missing information constituting the violation.

The amendments also address the manageability problems that can arise in PAGA cases because they are free from the constraints imposed by class action requirements. Challenges to manageability historically have been an important tool for the defense. Based on recent caselaw, the plaintiff's bar argued that such manageability challenges were improper. The new version of PAGA, however, expressly provides that the court may “limit the evidence to be presented at trial or otherwise limit the scope of any claim to ensure that the claim can be effectively tried.” Most practitioners read this provision as clarifying that the court has the power to address the manageability concerns that employers often raise.

The reforms further place express prohibitions on the ability to collect derivative penalties. For example, where a worker collects a civil penalty for unpaid wages, the new version of the law provides that the worker may not collect another civil penalty based on the contention their paystub is inaccurate because of the unpaid wages. Employers have long contended that such “stacking” of penalties was impermissible under prior law, but the plaintiff's bar took the opposite view, and the caselaw was less than clear. The amendments provide additional clarity.

Under the reforms, employers also have the opportunity to “cure” certain alleged Labor Code violations. Curing involves correcting the violations, complying with the law, and making the employees “whole,” which includes paying any unpaid wages and attorney fees, among other things.

The amendments further provide for somewhat complex procedures to facilitate an early evaluation and potential resolution. The provisions appear designed to reduce the prevalence of meritless claims, and invoking the procedures can stay the proceedings. But it remains to be seen how many employers who believe they complied with the law will see value in attempting to avail themselves of these procedures.

Under the prior law, employees stood to receive a 25% share of any civil penalties recovered with the remainder earmarked for the state. The reforms bump up the employee's share of any recovery to 35%. Employees also may seek injunctive relief instead of being limited to seeking civil penalties.

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Potential Considerations for Employers

To assess compliance with California law, and reduce potential exposure to PAGA, employers should consider reviewing their wage-and-hour policies, conducting periodic payroll audits, and assessing whether to provide additional supervisor training. With the reforms in place, employers may take some comfort in seeing some of the more extreme features of recent PAGA jurisprudence eliminated, but even in its current form PAGA remains one of the most worker-friendly laws in the nation.

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