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California Legislature Approves PAGA Reform Bills, Signaling Relief for Employers

On June 18, 2024, California Governor Gavin Newsom announced that an agreement was reached with business and labor groups to reform the existing Private Attorneys' General Act (PAGA). The agreement comes on the heels of a proposed November 2024 ballot measure which, if enacted, would do away with private PAGA actions (*i.e.*, actions brought by individuals in a representative capacity) and replace PAGA with a new law providing for state regulatory enforcement.

Following the June 18 agreement, California introduced two bills – Assembly Bill 2288 and Senate Bill 92 – to the legislature on June 21. On June 27, the legislature voted on and approved the two bills, which Governor Newsom is expected to sign into law. This represents the first significant modification of PAGA since it went into effect in January 2004, and signals positive news for California employers. With the new reforms going into effect, the PAGA repeal ballot measure will be withdrawn from the November 2024 ballot.

Here are key changes to the existing PAGA framework in light of the new reforms, which will apply to PAGA matters initiated on or after June 19, 2024.

The new reforms include two significant changes to the "standing" requirement under PAGA.

A plaintiff must have personally suffered each Labor Code violation they are seeking to pursue on behalf of other aggrieved employees. There is an exception to this new requirement for PAGA actions filed by employees who are represented by nonprofit legal aid organizations with Internal Revenue Code section 501(c)(3) exemption status.

A plaintiff must have personally suffered each alleged Labor Code violation within one year of commencing the PAGA claim by filing the required administrative notice (PAGA Notice) with the California Labor & Workforce Development Agency (LWDA).

These changes to the standing requirement overrule two existing California Court of Appeal decisions (*Huff v. Securitas Security USA Services, Inc.*[1] and *Johnson v. Maxim Healthcare Services, Inc.*[2]), and should limit the number of PAGA lawsuits filed and the scope of those lawsuits – developments that are likely to work to California employers' advantage.

The new reforms revise PAGA's penalty structure by incorporating caps and limits.

Employers' proactive reasonable steps to comply and "cure" violations upon notice will now assist in limiting PAGA related liability. Proactive reasonable steps by employers may include, but are not limited to, periodic audits and corrective measures in response to audits, implementation of compliant written policies, training on wage and hour compliance, and/or corrective action with respect to non-compliant employees and managers. The new reforms provide that such reasonable steps will be viewed in light of the "totality of the circumstances," taking into account the "size and resources available to the employer, and the nature, severity, and duration of the alleged violations." The term "cure" under the reforms means that the employer corrects the alleged violation(s) and complies with the Labor Code provisions specified in a PAGA Notice and that each alleged aggrieved employee is paid all owed, unpaid wages dating back three years from the date of the PAGA Notice, inclusive of interest, liquidated damages, and reasonable attorneys' fees and costs.

With respect to the cap structure, the following apply:

- If employers take all reasonable steps to be prospectively in compliance and cure alleged violation(s) either before or within 60 days of receiving a PAGA Notice, employers will not be subject to PAGA penalties.
- If employers demonstrate that they have taken all reasonable steps to remain compliant with the law before receiving a PAGA Notice or a records request, but do not cure alleged violation(s), then penalties are capped at 15% of the total sought penalties.

- If employers demonstrate that they have taken all reasonable steps to prospectively be in compliance with the law within 60 days of receiving a PAGA Notice, but do not cure alleged violation(s), then penalties are capped at 30% of the total sought penalties.
- Penalties will be capped at $15 per employee per pay period if employers do not take all reasonable steps to prospectively be in compliance with the law but cure alleged violation(s) when they are put on notice.

This structure incentivizes employers to take proactive and curative action with the focus of limiting exposure, in addition to providing an avenue for employers to respond to and defend against PAGA claims as they arise.

Penalties under PAGA for "subsequent violations," minor or technical violations, and derivative violations are now narrowed or eliminated. PAGA's existing framework includes a $100 penalty for initial violations and a $200 penalty per pay period for each subsequent violation. The reforms limit this $200 penalty to cases where a court or agency finds that an employer's conduct was malicious, fraudulent, or oppressive. The reforms also cap PAGA penalties at $25 for technical wage statement violations that do not cause actual harm to a plaintiff and includes a cap of $50 on penalties where errors are isolated or occur for less than 30 days and/or for less than four consecutive pay periods. Additionally, the reforms provide that PAGA penalties are not available for derivative Labor Code claims. Therefore, where an employee claims penalties under Labor Code section 203 for underpayment of final wages and/or under Labor Code 226 for wage statement violations, those violations will give rise to a single penalty, to avoid double-dipping under multiple penalty provisions.

There is a 50% reduction in PAGA penalties where employers follow a weekly pay period, as opposed to paying on a bi-weekly, semi-monthly, or other basis. This is welcome news for employers who pay on a weekly pay schedule, since PAGA penalties are based on the number of pay periods in which aggrieved employees experience alleged Labor Code violations – meaning an employer on a weekly pay schedule is likely to pay more in penalties than employers following a bi-weekly schedule.

The new reforms include the potential for injunctive relief in addition to increasing the amount of penalties recoverable by aggrieved employees.

A PAGA plaintiff is now entitled to seek injunctive relief from courts. Additionally, the net recovery allocated to aggrieved employees will increase from 25% to 35%, with the remainder going to the state.

The new reforms empower courts to rule on manageability concerns, to limit evidence at trial, and to limit the scope of PAGA claims to ensure that they can be appropriately tried.

This is in line with the California Supreme Court's decision in *Estrada v. Carpet Royalty Mills, Inc.*[3] , which held that trial courts should use tools at their disposal to manage PAGA actions.

The reforms introduce early case resolution procedures, creating employer-side incentives for quick response to PAGA Notices.

Starting October 1, 2024, employers with less than 100 employees during the PAGA period can submit (pre-litigation) a confidential proposal to the LWDA within 33 days of receiving a PAGA Notice than sets forth a proposal to cure alleged violations. The reforms provide for an accelerated timeline for the conference to occur. If the LWDA determines that the proposal is insufficient, the employee who submitted the PAGA Notice can proceed with filing a PAGA action in court. All other employers can – once a PAGA lawsuit is filed in court – request the court for a stay on responsive pleading and discovery deadlines and schedule an early evaluation conference. If the conference is not successful, the parties resume litigation, but the employer may bring a motion for the court to approve the cure and include evidence of the corrective action the employer took. There is a separate process if the only alleged violation an employer seeks to cure is Labor Code section 226 violation (alleged wage statement inaccuracies).

Employers should review their wage and hour policies and practices and take proactive steps to comply in light of this new PAGA framework reform.

This blog was drafted by Elaisha Nandrajog, Jennifer Coleman, and Servando Sandoval, attorneys in the Spencer Fane San Jose, California office. For more

information, visit www.spencerfane.com.

1 23 Cal.App.5th 745 (2018)

2 66 Cal.App.5th 924 (2021)

3 15 Cal.5th 582 (2024)

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