

California Overhauls Private Attorneys General Act

By Mia Farber, Scott P. Jang & Shannon Bettis Nakabayashi

July 2, 2024

Meet the Authors



Mia Farber

(She/Her)

Principal

213-630-8284

Mia.Farber@jacksonlewis.com



Scott P. Jang

Principal

(415) 394-9400

Scott.Jang@jacksonlewis.com



Shannon Bettis Nakabayashi

(She/Her)

Principal

On July 1, 2024, California Governor Gavin Newsom signed two bills, [Senate Bill 92](#) and [Assembly Bill 2288](#), that amend the state's Labor Code Private Attorneys General Act (PAGA), which deputizes private parties to enforce the Labor Code on behalf of the state.

In mid-June, the governor announced a deal had been reached with the legislature and business groups to reform PAGA. According to the agreement, business groups would withdraw [a ballot measure to repeal PAGA](#) if the two bills were signed.

As detailed below, highlights from the amendments include important changes to: (1) PAGA's early evaluation and cure options; (2) PAGA's standing requirements; (3) PAGA's penalties; and (4) a court's tools to ensure that PAGA actions remain manageable. The amendments apply to PAGA actions filed on or after June 19, 2024, unless the underlying PAGA notice was submitted to the Labor Workforce Development Agency (LWDA) and the employer prior to June 19, 2024.

Early Evaluation Conference; Cure Options

The amendments include a new procedure for employers to address and cure alleged Labor Code violations *after* an employer is served with a PAGA action complaint.

At the time of any initial appearance in the case, an employer may request an early evaluation conference and stay of the court proceeding. The employer must submit a confidential statement explaining which alleged Labor Code violations it disputes and which, if any, alleged Labor Code violations it intends to cure. The PAGA plaintiff, in turn, must submit a confidential statement explaining the factual basis for the alleged Labor Code violations, the amount of penalties claimed for each violation, the basis for accepting or not accepting any cure proposal presented by the employer, and any demand for settlement of the case in its entirety. A neutral evaluator will conduct a confidential early evaluation conference to explore the strengths and weaknesses of the plaintiff's claims, whether any cure proposal by the employer should be adopted, and whether the plaintiff's claims can be settled. If the neutral evaluator accepts an employer's cure proposal and the employer subsequently proves the cure has been made, the potential PAGA penalties that may be recovered for the alleged violation are significantly reduced (discussed further below).

In addition, starting October 1, 2024, employers with fewer than 100 employees have expanded options to cure alleged Labor Code violations upon receiving a PAGA notice. In addition to the early evaluation conference discussed above, employers with fewer than 100 employees may preempt the filing of a PAGA action in whole or part by curing the Labor Code violations alleged in the PAGA notice.

Related Services

California Class and PAGA Action
Class Actions and Complex Litigation
Litigation

Penalty Reform

Some of the most significant changes under the amendments affect PAGA's penalty structure. The new legislation seeks to strike a balance between enforcement and fairness, with an emphasis on reducing penalties for technical violations or where the employer can demonstrate good faith efforts at complying with the Labor Code.

- *Penalty Caps for Good Faith Compliance:* PAGA penalties are capped at 15% for employers who demonstrate that, *prior* to receiving a PAGA notice or a request for employment records from the PAGA plaintiff, the employer took "all reasonable steps" toward complying with the Labor Code provisions in the PAGA notice. The amendments define "all reasonable steps" as including, but not limited to, conducting periodic payroll audits, taking action in response to the results of the audits, disseminating lawful written wage and hour policies, training supervisors on wage and hour compliance, and taking appropriate corrective action with regard to supervisors. The cap is 30% if an employer demonstrates that, *within 60 days* of receiving a PAGA notice, it took all reasonable steps toward complying with the Labor Code provisions identified in the PAGA notice.
- *Reduced Penalties for Wage Statement Violations:* PAGA penalties for wage statement violations are reduced from a general maximum \$100 to \$25 per aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the information allegedly unlawfully missing from the wage statement.
- *Reduced Penalties for Derivative Violations:* PAGA penalties for untimely payment of wages during employment and/or upon separation are not recoverable if the claim is derivative of an unpaid wage claim and the violation was neither willful nor intentional. Similarly, PAGA penalties for inaccurate wage statements are not recoverable if the claim is derivative of an unpaid wage claim and the violation was neither knowing nor intentional.
- *Reduced Penalties for Cured Violations:* If an employer cures a violation through the early evaluation conference (discussed above), the PAGA penalty is capped at \$15 per aggrieved employee per pay period. Further, if the cured violation was by an employer who took all reasonable steps to comply with the Labor Code provision at issue or one relating to wage statements, the PAGA penalty is reduced to \$0.
- *Reduced Penalties for Isolated Violations:* If a violation occurred due to an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods, the PAGA penalty is capped at \$50 per aggrieved employee per pay period.
- *Relief for Employers With Weekly Pay Periods:* The amendments reduce any PAGA penalties recoverable against employers who have weekly pay periods by one-half. This effectively places employers with weekly pay periods on equal footing as employers who have biweekly pay periods.

- *Limited Aggravated Penalties:* PAGA's aggravated penalty of \$200 per aggrieved employee per pay period applies only where either (a) within five years preceding the alleged violation, a court or the LWDA issued a determination that the employer violated the Labor Code provision in dispute; or (b) the employer's conduct was malicious, fraudulent, or oppressive.
- *Increased Employee Share of Penalties:* PAGA penalties will be distributed as follows: 65% to the LWDA and 35% to the aggrieved employees. PAGA previously allocated 75% of the penalties to the LWDA and 25% to the aggrieved employees.
- *Injunctive Relief:* A plaintiff may pursue injunctive relief under PAGA.

Standing Requirements

Except for certain non-profit legal aid agencies, PAGA plaintiffs will face stricter standing requirements. Previously, a plaintiff could pursue PAGA claims even if they did not personally experience each of the alleged Labor Code violations asserted in the lawsuit; rather, the plaintiff had to experience only one of the alleged Labor Code violations to have standing to assert all the other claims. Under the amendments, the plaintiff must personally experience each of the Labor Code violations alleged in the lawsuit. Moreover, the plaintiff must have personally experienced the Labor Code violation within the one-year period prior to the PAGA notice. The impact of the amendment is to essentially bring state court PAGA standing standards more in line with the federal PAGA standing standards.

For example, previously, a plaintiff who experienced only meal period violations could assert and pursue PAGA claims not only for meal period violations but also for alleged rest break violations, unpaid overtime, and other Labor Code violations unrelated to meal periods. Under the amendments, if the plaintiff experienced only meal period violations, the plaintiff may pursue only PAGA claims related to meal periods.

Manageability

PAGA cases can be complex and unwieldy, especially when the case involves multiple alleged Labor Code violations and numerous employees with differing working conditions. To address this issue and ensure that PAGA claims remain manageable, the amendments build upon the California Supreme Court's decision in *Estrada v. Royalty Carpet Mills* and expressly grant California courts the discretion to limit the scope of PAGA claims and evidence presented at trial. Courts may also consolidate or coordinate different PAGA actions that involve overlapping violations against the same employer.

What Should Employers Do Now?

The amendments incentivize and reward employers for making good faith efforts at complying with the Labor Code. Employers should regularly review their wage and hour policies and practices, which include auditing all payroll and timekeeping practices, to be able to reduce potential PAGA penalties should inadvertent compliance issues arise. Moreover, an employer should promptly review any PAGA

notices it receives to determine whether to utilize PAGA's newly expanded cure and early evaluation options. Doing so can substantially reduce the potential risk and exposure posed by the PAGA action. Please contact a Jackson Lewis attorney with any questions.

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.