

California Manufacturing Employers: Avoid Potential PAGA Claims Based on Cal/OSHA Violations

By Eric J. Gitig

August 23, 2024

Meet the Authors



Eric J. Gitig

Principal

213-630-8242

Eric.Gitig@jacksonlewis.com

Related Services

California Advice and Counsel
California Class and PAGA
Action
Manufacturing

With proper planning, Golden State manufacturing employers can mitigate the risk of Private Attorneys General Act (PAGA) claims premised on alleged violations of the California Occupational Safety and Health Act (Cal/OSHA).

What is PAGA?

The California PAGA statute permits “aggrieved employees” to file lawsuits on behalf of themselves and other current or former employees against an employer to recover civil penalties for violating the California Labor Code. Thus, PAGA deputizes employees to enforce labor laws on behalf of the State of California. The number of PAGA notices submitted per year between 2014 and 2023 averaged more than 5,500, hitting a high of nearly 8,000 in 2023.

Historically, PAGA claims primarily focused on seeking penalties based on alleged wage and hour violations (such as failure to pay minimum wage and overtime compensation, missed meal and rest period premiums, failure to pay timely final wages, inaccurate wage statement, and failure to reimburse necessary business expenses). Emerging PAGA-related activity suggests more attention is being paid to Cal/OSHA violations than ever before. PAGA notices, especially those filed against manufacturing employers, are increasingly including potential claims for health and safety violations under Cal/OSHA. Relatedly, pre-litigation requests for payroll and personnel records are asking for occupational safety and health records as well – including the employer’s Injury and Illness Prevention Program, Hazard Communication Program, injury logs, and [Workplace Violence Prevention Plan](#).

Intersection of PAGA and Cal/OSHA

The California Division of Occupational Safety and Health enforces workplace safety standards in California. Because the standards are under the California Labor Code, PAGA authorizes employees to seek penalties for an employer’s alleged failure to comply with Cal/OSHA requirements. These include:

- Failure to provide a place of employment that is safe and healthful.
- Failure to furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes that are reasonably adequate to render such employment and place of employment safe and healthful.
- Failure to implement and maintain an effective written injury and illness prevention program.
- Requiring or permitting an employee to go or be in any employment or place of employment that is not safe and healthful.

- Failure or neglect to provide and use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate methods and processes, or to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Mitigating the Risks

Recent amendments to PAGA permit employers to cap potential PAGA penalties by showing that “all reasonable steps” were taken to comply with the Labor Code. Therefore, manufacturing employers should consider proactively ensuring compliance with Cal/OSHA standards, both before a PAGA notice is filed or once notice of potential claims under PAGA is received. Steps may include:

1. Ensure periodic safety audits are being performed and all hazards are promptly corrected.
2. Disseminate lawful written safety policies and protocols to employees, and regularly review and update written policies to ensure compliance with Cal/OSHA standards.
3. Provide training to educate and remind managers, supervisors, and employees about safety standards and protocols.
4. If a safety violation occurs, address it immediately. Implement corrective actions and document the steps taken to rectify the issue.

Manufacturing employers should further be mindful of the new indoor heat regulation now in effect in California.

Employers who receive a PAGA notice face strict deadlines to potentially cure the alleged violations or take steps to comply with the Labor Code. Please contact a Jackson Lewis attorney if you have any questions about Cal/OSHA, PAGA, or other workplace issues.

©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>.