



## **ALERT**

### **BUSINESS AND LABOR GROUPS BROKER PAGA REFORM**

Gov. Newsom's office announced that business and labor groups have agreed upon a proposal to revise the Private Attorneys General Act ("PAGA"). The proposal must be approved by the California Legislature and signed by the Governor.

The Legislature enacted PAGA in 2004, in response to reports of widespread labor abuses that were not being addressed. At that time, The Department of Labor Standards Enforcement ("DLSE") was unable to handle its workload in a timely manner due to underfunding. PAGA's goal was to address these issues by allowing individual employees to bring suit on behalf of their co-workers for alleged Labor Code violations. The statute required 75% of recoveries to be paid to the State, with the remaining 25% going to the employees. The statute also allowed plaintiffs' attorneys to recover their reasonable fees incurred in bringing the lawsuits. The statute required employees to provide notice to employers of alleged Labor Code violations and to provide time for the employer to address the violations. If the employer did not do so, the employer was subject to fines and penalties for violations that occurred within a year prior to the notice.

In the twenty (20) years that the law has been in effect, it has cost employers billions of dollars in attorneys' fees, fines, and penalties. However, employees have received small sums. The true beneficiaries of the statute have been the plaintiffs' attorneys. A study that concluded in 2023 determined that:

- the average employee recovery on claims adjudicated by the DLSE's Wage Claim Adjudication Unit was \$3600, and the average time from filing to adjudication was ten (10) months
- the average employee recovery on claims handled by the DLSE's Bureau of Field Enforcement was \$6400, and the average time from filing to adjudication was five (5) months
- the average employee recovery on PAGA claims decided by the Labor and Workforce Development Agency (LWDA) after receipt of notice of alleged violations was \$4000, and the average time from notice to decision was twelve (12) months



- the average employee recovery in PAGA cases that went to court verdict or public court settlement was \$1,264, and the average time from filing to verdict was twenty-two (22) months. The average attorneys' fee award in these cases was \$370,000<sup>[1]</sup>; in addition, the average amount of litigation costs was \$28,000, and the average amount paid to settlement administrators was \$17,700

- the total cost to businesses over the last decade is estimated at roughly \$10 billion.

This situation caused several groups within the business community to craft a ballot initiative that would've effectively repealed PAGA by disallowing attorneys' fee awards and by requiring the Legislature to fund the DLSE sufficiently to allow it to resume handling Labor Code violation claims on a wider basis. In response, labor organizations and the Governor's office invited the business community to come to the table and to negotiate a compromise. The proposal that emerged from these negotiations includes provisions aiding both employers and employees:

#### **For Employers**

1. The plaintiff must have personally suffered the Labor Code violation for which they seek a penalty. Formerly, a plaintiff who suffered a single code violation could sue for violations committed against other employees.
2. The PAGA suit can only recover for violations occurring within one year of the date of the notice to the LWDA (not for violations occurring outside of the limitations period under the "continuing violations" theory).
3. Courts may have the power to limit or reject PAGA claims if they are unmanageable (the State Supreme Court had ruled that courts could not dismiss PAGA claims on this basis).
4. Employers who take proactive steps to address Labor Code violations before receiving a PAGA notice will be penalized no more than 15% of the maximum allowable penalties. Employers who address Labor Code violations after receiving a PAGA notice will be penalized no more than 30% of the maximum allowable penalties.
5. Small employers will now have the right to address violations administratively through the LWDA.

#### **For Employees**

1. The employees' share of recovery is increased from 25% to 35%.
2. Courts would now have the ability to issue injunctions against unlawful employer conduct.
3. Courts can now impose a "punitive penalty" of up to \$200 per pay period per employee on employers who act maliciously, fraudulently, or oppressively.

The proposal also anticipates additional funding for the Department of Industrial Relations, which would allow for increased hiring and in turn increased administrative enforcement of Labor Code violation claims. It is hoped that increased administrative review and enforcement will reduce the number of lawsuits, thereby reducing the amount of attorneys' fees incurred by employers. The proposal does not cap or otherwise address attorneys' fees.

The exact language of the proposed legislation will be released on June 24<sup>th</sup>. Since the deadline for withdrawal of the initiative to repeal PAGA is June 27<sup>th</sup>, the Legislature and the Governor's office are expected to move quickly.

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<sup>[1]</sup> This figure does **not** include the amount of attorneys' fees that employers paid to their own attorneys.



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