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California Governor Signs PAGA Amendments into Law, Declaring "a big win for both workers and businesses."

Publications

October 2024
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On July 1, 2024, California Governor Gavin Newsom signed into law reforms intended to moderate California's unique and controversial Private Attorneys General Act ("PAGA"). The PAGA amendments are widely seen as a compromise after a pro-business political action committee sought to place a measure on the ballot that would allow voters to repeal the law.

Enacted in 2004, PAGA allows employees to sue employers for alleged Labor Code violations on behalf of the State, with a portion of any recovery (originally 25%, now 35%) going to the named plaintiffs and the remainder to a California agency. Buoyed by substantial legal settlements (driven by the risk of even greater penalties and defense fees) and labor-friendly court rulings, PAGA litigation exploded in recent years, meaningfully increasing the cost of doing business in California. For example, in 2018, a California appellate court held that employees could sue over Labor Code violations they had not personally experienced if other employees had experienced the violations. *See Huff v. Securitas Security Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761 (2018). That allowed lawyers to identify one or a few employee plaintiffs, file a vague complaint asserting a laundry list of violations, conduct broad discovery, and then frame the lawsuit based on the results of that discovery.

The reforms are intended to focus the statute on violations plaintiffs actually experienced and employers that fail to take reasonable steps to comply with the Labor Code. Under the new amendments, an employee can file representative PAGA claims only as to specific Code violations they personally experienced within the past year. The reforms also incentivize employers to take proactive steps to comply with the Labor Code and to promptly investigate, remediate, and cure potential violations after receiving a PAGA notice. For example, an employer who takes "all reasonable steps" to come into compliance with Labor Code provisions identified in the notice within 60 days of receiving a PAGA notice is entitled to a 70% reduction in penalties.

The amendments also reduce penalties for several categories of violations, while authorizing an increased $200 per-period penalty for cases in which an employer is found to have engaged in malicious, fraudulent, or oppressive conduct or where the company's practice was already found unlawful within the prior five years. The new law caps penalties at $25 for technical wage statement violations and $50 where errors are isolated or limited in duration and it eliminates penalties for certain “derivative” violations, such as pay stub errors that result from a missed meal or rest break.

While the reform is good news for employers operating in California, much remains to be seen as to how courts will interpret the amendments.

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