

Legislative Action Heralds Sweeping Changes to PAGA, Resulting in Tools for More Effective Administration and Potential to Curb Abuse, Benefiting Both Employers and Workers

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The Private Attorneys General Act of 2004 (“PAGA”) has been increasingly criticized as harmful to employers and employees. Well-meaning organizations are forced to expend resources settling often frivolous actions rather than investing in their own workforces, only to be sued again as soon as the ink dries on the previous settlement. The aggrieved employees receive small amounts, with plaintiffs’ attorneys collecting 30%-40% of the settlement, and the bulk of the settlement being paid directly to the state. Recent court decisions chipped away at the ability for defendant employers to narrow the scope of such actions, which are typically brought on behalf of all nonexempt employees, regardless of their similarity or relation to the individual suing. Organizations often settle, even where their policies and practices are compliant.

Earlier this year, a coalition of groups qualified a ballot measure for November 2024, the Fair Pay and Employer Accountability Act, to reform PAGA and replace it with a more effective framework for curtailing actual violations. Under the ballot initiative, private plaintiff attorneys would have no role and the Labor Commissioner would handle all claims. In a recent deal brokered by Governor Gavin Newsom, the ballot initiative has been replaced with amendments to the PAGA statute, which do not repeal PAGA but instead introduce a significant shift in employment litigation, curtailing potential abuse by plaintiffs’ firms and offering a more pragmatic approach relating to the administration of PAGA claims. As a result of the legislative action, the ballot provision will be withdrawn.

Specifically, the two bills combined present the following changes:

1. **Standing Requirement:** Whereas prior law broadly authorized an aggrieved employee to bring a civil action on behalf of others to enforce any Labor Code violation, now, an employee can only bring an action on behalf of themselves and other current or former employees if they personally suffered the same Labor Code violation within the one year period prior to filing the PAGA notice.
2. **Modified Civil Penalties:** The new law aims to alleviate the severity of penalties for employers, particularly with respect to wage statement violations that present no actual harm to the employees because they can readily discern the accurate

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information included therein.

3. **Opportunities for Cure:** While PAGA previously provided a limited “cure” provision, the new law offers a more robust mechanism for cure. It also establishes a 15% cap on penalties for employers who demonstrate that they have taken all reasonable steps to be in compliance” with the law prior to receipt of a PAGA notice or a request for personnel records. Examples include, but are not limited to, conducting periodic payroll audits, and curing violations in response to the results of the audit, disseminating lawful written policies, training supervisors on Labor Code and wage order compliance, or taking appropriate corrective action with regard to supervisors who violate the employers’ compliant policies. Further, where an employer “has taken all reasonable steps to prospectively be in compliance with all provisions identified in the notice” within 60 days of receipt of the notice of violation, penalties are capped at 30%.
4. **Limitation on Stacked Penalties for Certain Violations:** The new law eliminates the ability to collect penalties on PAGA claims for violations pertaining to the timing and issuance of wages, where the conduct was not “willful or intentional” and for wage statement violations that were not “knowing or intentional.” In effect, PAGA plaintiffs would no longer be able to collect penalties on these claims when they cannot meet the statutory standard set out in the underlying Labor Code provision.
5. **Distribution of Penalties:** The bill awards 35% (instead of 25%) of civil penalties to aggrieved employees, thereby reducing the penalties to the LWDA to 65% of the total amount of penalties (instead of 75%).
6. **Authorized Discretion of the Court to Streamline Litigation:** The court may limit the evidence to be presented at trial or otherwise limit the scope of the action to ensure that the claim can be effectively tried, and may consolidate or coordinate civil actions alleging legally or factually overlapping violations against the same employer. This signals a return to the “manageability standard” that was recently eliminated by a previous court decision.
7. **Early Evaluation Conference:** The new law provides an opportunity for employers to request an early evaluation conference, allowing an expedited process not to extend beyond 30 days, to avoid protracted litigation. To the extent there is disagreement as to whether the employer has cured the alleged violations, the bill provides for briefing and evidentiary submission by the parties. Further, the bill encourages courts to consider violations that were cured when calculating the penalties owed.
8. **Injunctive Relief:** Both the state agency and aggrieved employees are authorized to seek injunctive relief in the form of a court order that the employer change their practices or policies to comply with the law.

Importantly, these new standards will apply to all cases based on PAGA notices filed on or after June 19, 2024. The reform provides employers tools to cure violations and narrow PAGA actions to a manageable scope, which may result in the ability for organizations with compliant policies and practices to prevail on all or part of the action on summary judgment or at trial, rather than being required to enter into successive settlements.