

PAGA State of Play – Reform, Regulation, and Lasting Leverage

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Since its inception, California's Private Attorneys General Act has provided the plaintiff's bar with a uniquely powerful tool. By deputizing "aggrieved employees" to enforce California's Labor Code on the state's behalf, PAGA has enabled private counsel to pursue civil action even when the individual employee's harm may be minimal or even nonexistent. This framework has facilitated the rise of "headless" claims: representative actions where the named plaintiff dismisses their individual PAGA claim – often because the Federal Arbitration Act (FAA) mandates enforcement of an arbitration agreement – and exists as a procedural hook to assert representative PAGA claims on behalf of others. This risk-free practice, which often leverages boilerplate allegations to force extensive discovery or settlements, has largely benefited plaintiff's counsel, while providing minimal recovery to the named plaintiff. Indeed, in reality, most of the money from a PAGA settlement doesn't reach the employees: roughly a third goes to plaintiff's counsel in attorneys' fees, 65% of any PAGA penalties are paid to the state, and only 35% of any PAGA penalties goes towards the employees, which is then divided among all those covered by the claim – leaving each individual with a fraction of the total. PAGA litigation therefore often benefits lawyers and the state far more than the workers that the statute was designed to protect.

Current legislative and administrative reforms sought to curb aggressive litigation tactics by refining penalty structures and dramatically expanding an employer's right to "cure" identified violations. New administrative regulations aim to standardize filings and limit abusive practices while implementing procedural mechanisms, such as early judicial evaluation, that allow the courts to narrow the scope of the cases from the outset. Concurrently, case law continues to evolve regarding the enforceability of provisions in arbitration agreements that require adjudication of an individual employee's PAGA claim in arbitration first, before the representative claims on behalf of other allegedly aggrieved employees can proceed in court (commonly called "headless" claims) – a question that has courts divided and is pending Supreme Court review^[1] in a decision that could effectively end these "headless" PAGA claims.

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Yet, despite these reforms, one central reality persists: PAGA continues to exert significant pressure on employers. Filings remain robust, settlement incentives remain high, and trials are exceedingly rare. Compliance audits, cure efforts, and procedural refinements matter – but they do not eliminate the leverage embedded in representative claims or repeated filings. PAGA has been shaped, structured, and regulated – but it has not been diminished. The current landscape reflects a complex interplay of reform, litigation strategy, and enforcement dynamics, where standing, repeated filings, and settlement pressures continue to define employer exposure.

1. **Legislative Reform and Cure: Structure Without Contraction**

The July 2024 legislative amendments championed by Governor Gavin Newsom demonstrated a profound and meaningful effort to rein in abusive bounty-hunter litigation towards a system that incentivizes employer transparency. By implementing strict standing requirements and robust “cure” provisions, the amendments have sought to reduce the prevalence of opportunistic filings, on one hand, while simultaneously affording a larger share of recovered penalties delivered directly to the impacted work force, on the other.

First, the 2024 reform tightened standing by requiring that a PAGA plaintiff personally suffer each specific alleged violation within the one-year statute of limitations. This replaces the previous, highly permissive standard that allowed an employee to act as a proxy for the entire workforce and pursue penalties for a wide array of Labor Code violations they never actually experienced, so long as they suffered *at least one* unrelated violation, even if the underlying labor code violation was outside the statute of limitations. Put simply, this change requires PAGA plaintiffs to have more “skin in the game” for all the violations alleged, thus narrowing what claims an employee may pursue on behalf of others. In theory, the reforms created a procedural threshold that should filter out claims that exist primarily as leverage for settlements rather than vindicate actual employee harm.

The 2024 reform has had particularly pronounced effects in headless PAGA cases – where the named plaintiff’s individual PAGA claim has been dismissed – raising the question as to whether that plaintiff retains standing to pursue the representative PAGA claims on behalf of others. This question, which has the courts divided, is now situated for Supreme Court review, and the answer is not purely academic; rather, this determination will inevitably influence settlement strategy, affect the effectiveness of arbitration, and shape how repeated filings are leveraged. In other words, if an employee’s individual PAGA claim is first compelled to arbitration, that employee must successfully arbitrate their claims in full before proceeding in court with respect to PAGA claims on behalf of others. In effect, counsel may have to actually litigate individual cases rather than simply leveraging settlements based on unverified representative claims. However, until resolved by the Supreme Court, representative claims can continue to generate significant pressure, independent of other procedural or statutory refinements, as counsel hems and haws about how the law will unfold until this decision has been rendered.

Second, those reforms also refined how penalties are assessed and capped for common errors and expanded opportunities to cure violations by making aggrieved employees whole. On paper, through internal audits, employers can now identify and correct potential violations, implement compliance measures, and document “reasonable steps” that legally cap penalty exposure: 15% if completed before a PAGA demand or 30% if completed after notice of the PAGA action. As it stands, legislation is unclear as to how often these audits are to be performed, but an annual audit may ensure compliance well before any demand arises. Further, the 2024 amendments also offer an additional defense: once an employer has performed a qualifying audit and cured identified errors, they have a statutory right to “stay” subsequent litigation for early judicial evaluation through an early neutral evaluation (“ENE”).

However, while the ENE promises to clarify disputed issues, evaluate proposed cures, and streamline resolution, the reality is that this forum is ripe with uncertainty and offers less flexibility than traditional mediation. Experienced neutrals and practitioners have raised concerns that this “newfangled” step may complicate rather than simplify resolution. Because the statute does not clearly map out what happens once an evaluation is initiated, parties may find themselves navigating a process that adds time and expense without necessarily making settlements easier or more likely than achieved by mediation with a mutually agreed-upon mediator who is trusted by both parties.

Because very few PAGA actions ever go to trial, as most are resolved through negotiation or settlement long before formal adjudication, the true impact of these reforms is largely untested. Until these limitations are litigated, the practical effect of these reforms remains more theoretical in nature. Employers will likely cite to audits and cure efforts while plaintiff’s lawyers continue to cast aside their impact on settlement strategy.

1. Further Legislative Reforms Attempt to Curtail the Reach of PAGA

The ongoing tension between expanding enforcement and controlling abuse remains ever present in the legislative reforms and administrative developments. On February 2, 2026, the Legislature rejected Senate Bill 310 (“SB 310”), which sought to push back on the July 2024 reforms and create a standalone private right of action for untimely wage payments, which would increase PAGA penalties. Days later, on February 6, 2026, the LWDA Notice of Proposed Rulemaking demonstrated yet another meaningful effort to rein in PAGA. If adopted, these regulations would:

- Standardize administrative notice requirements and require detailed factual and evidentiary certification;
- Impose additional certification for high-frequency filers (200+ notices annually) with increased scrutiny for noncompliance;
- Clarify the cure process and how employers can document remediation; and
- Enhance oversight of settlements, including opportunities for affected employees to comment.

However, these mechanisms do not materially change the economic incentive for plaintiffs to file broad, representative claims. The proposed rules may refine the process

and filings, but repetitive, lightly modified claims will persist absent litigation as to the full impact and extent of these changes.

- **The State of Play for PAGA and the Path Forward**

The recent PAGA reforms aim to narrow the statute's reach, but their ultimate effect depends on how case law continues to solidify in 2026. Compliance programs, audits, and well-designed policies remain as critical as ever, and their importance will only grow if courts begin to give real weight to these defenses, providing meaningful tools to cap PAGA penalties. Historically, because most PAGA cases never reach a verdict, these actions have been driven by settlement pressure rather than adjudication. Yet, this evolution of PAGA presents opportunities for courts to impose meaningful caps on penalties for employers who conduct audits, cure and require individualized litigation before representative claims can proceed. This shift restores the significance of the individual employment relationship – historically sidelined in a lawyer-driven process – by requiring plaintiffs to personally suffer every alleged violation to maintain standing. Thus, by focusing on strong employee relationships and proving compliance, employers effectively neutralize the settlement-driven momentum that has largely driven PAGA litigation.

[1] The California Supreme Court is expected to release its decision in *Leeper v. Shipt, Inc.* in early 2026, having granted review in April 2025, with a briefing schedule that concluded in December 2025.