



paga: the next generation: recently published faqs clarify new legislative changes

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With the recent legislative reform to the California Private Attorneys General Act ("PAGA"), the California Department of Industrial Relations ("DIR") has published a set of helpful Frequently Asked Questions ("FAQs") breaking down some of the key changes to the law for employers.

The pertinent changes noted in the FAQs include:

- **PAGA Recovery:** 75 percent of the recovered penalties under PAGA will go to the State of California and 25 percent will go the aggrieved employees for PAGA notices filed with the Labor & Workforce Development Agency ("LWDA") before June 19, 2024. For PAGA notices filed thereafter, 65% will go the State and 35% will go to the aggrieved employees. Subject to certain exceptions, however, the penalties can be reduced if employers can show they took "all reasonable steps" to comply with the law.
 - If "all reasonable steps" were taken to comply with the law **before** receiving the PAGA notice, but the violation still occurred, the civil penalty is capped at 15% of the maximum available award.
 - If "all reasonable steps" were taken prospectively in compliance with the law **within 60 days** of receiving the PAGA notice, the civil penalty is capped at 30% of the maximum available award.

While the FAQs do not define what taking "all reasonable steps" would entail, Labor Code section 2699 provides some examples, such as auditing payroll, disseminating lawfully written policies, and taking corrective action against supervisors. Taking "all reasonable steps" are evaluated by the totality of the circumstances.

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practice areas

employment litigation & counseling
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- **PAGA Notice Requirements:** PAGA notices must specify the section(s) of the Labor Code alleged to be violated and it must include sufficient facts and legal theories to support each violation. It is not enough to simply recite or rephrase law or code section(s) or make conclusory statements without factual support. The letter must provide adequate notice for the state to investigate the allegations and provide employers the opportunity to correct the violation in certain circumstances.
- **More Violations Can Be Cured:** The enumerated violations that can be cured are expanded for notices filed on or after June 19, 2024. Employers have the opportunity to cure minimum wage, overtime, meal and rest breaks, necessary expense reimbursement, and all requirements of itemized wage statements, among others.
- **New Processes for Certain Types of Cures Effective October 1, 2024:** Employers of any size may cure violations of Labor Code section 226 (wage statement violations). Employers that employ fewer than 100 employees may submit to LWDA proposals to cure violations within 33 days of the PAGA notice, and LWDA *may* set a conference to evaluate the sufficiency of the cure.
- **Requesting an Early Evaluation Conferences:** Employers can request an early evaluation conference and stay of the court proceedings when served with a summons and complaint. This process is overseen by a neutral evaluator and is distinct from the administrative cure process that LWDA administers.
- **PAGA Settlements Must Be Approved by the Court:** the court must “independently review and approve PAGA settlements to make sure the resolution is fair to those affected.” Additionally, proposed settlements must be submitted to the court and through the PAGA filing portal.
- **The LWDA May Object or Intervene on a Proposed Settlement:** If the proposed settlement does not meet PAGA's purpose, the LWDA may object to or intervene on a proposed settlement. Settlements that may raise red flags include:
 - Releasing claims that are not included in the employee's PAGA notice;
 - Designating the settlement or terms of the settlement agreement confidential;
 - Reverting settlement funds to employers if not fully paid out to aggrieved employees;
 - Not correcting, in whole or in part, violations identified in the employee's PAGA notice;
 - Failing to justify the settlement amount and discounts to claim(s); and
 - Substantially discounting claims and extinguishing other pending PAGA lawsuits.

MSK's Labor & Employment team remains ready and available to advise California employers on the new changes to PAGA and options available to employers.