



paga: the next generation, now in wide release for california employers!

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MSK Client Alert

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It's not very often that California enacts a labor law that is actually *favorable* to employers— but that very occasion happened this week, setting off early celebratory fireworks for California businesses. On July 1, 2024, Governor Newsom signed into law significant reforms to the Private Attorneys General Act ("PAGA"), introduced under Assembly Bill 2288 and Senate Bill 92. Since PAGA's enactment more than two decades ago, thousands of California employers have been sued for penalty violations collectively amounting to billions of dollars in settlements.

The new law is set to revolutionize PAGA litigation, as Governor Newsom explained, by streamlining the current system, improving worker protections, and in most cases reducing potential employer liability.

Key Provisions of the new PAGA reform law:

- **Plaintiffs bringing PAGA actions on behalf of other employees against an employer must have personally been affected by the alleged Labor Code violations, and the action must be commenced within one year of the violations.** These new standing requirements aim to reduce PAGA litigation for plaintiffs who did not personally suffer violations, and the requirements help reduce "fishing expeditions" by plaintiffs hoping that potential violations will be revealed.
- **The employees' share of penalties awarded are increased from 25% to 35%.** The new law allocates more PAGA penalties to aggrieved employees to ensure they get a bigger share of the settlement proceeds or awards.
- **New monetary caps are imposed for penalties against employers, depending on their attempts to comply with the Labor Code.** For employers who prospectively take "all reasonable steps" to be in compliance with certain labor laws before receiving a PAGA notice or a request for personnel

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labor & employment



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or wage records, penalties are capped at 15% of the maximum available award. For employers who take "all reasonable steps" for compliance within 60 days of receiving a PAGA notice, penalties are capped at 30%. In determining whether an employer undertook "all reasonable steps," several factors are considered, including whether the employer "conducted periodic payroll audits and took action in response to the results of the audit, disseminated lawful written policies, trained supervisors on applicable Labor Code and wage order compliance, or took appropriate corrective action with regard to supervisors."

- **Maximum penalties are reduced where the alleged violation was brief and for technical wage statement violations that did not cause confusion or economic harm to the employee.** For example, where a wage statement violation does not cause harm to the plaintiff, the available penalty is capped at \$25 per violation.
- **For employers with weekly pay cycles, penalties are reduced by 50%.** Previously, penalties were assessed per pay period, which essentially resulted in twice the amount of penalties for employers with weekly pay cycles. The new law thus equalizes the potential penalties for employers who choose to pay employees on a weekly basis.
- **Employers are afforded opportunities to avoid litigation by curing many violations or engaging in an early resolution process through the courts.**
 - Where a PAGA action has not been commenced, employers with less than 100 employees may notify the Labor & Workforce Development Agency ("LWDA") to discuss a proposal to cure alleged violations within 33 days of receiving a PAGA notice. If the LWDA does not act or the employee rejects the proposal, employees may only then commence an action.
 - Where an action is already filed, employers with at least 100 employees may request an "early evaluation conference" with a "neutral evaluator" and request a stay of the court proceeding, no later than the date of the first responsive pleading, to cure the alleged violations. If the conference is not successful, only then will litigation resume. Significantly, an employer may also file a motion for the court to approve the cure, even if the neutral evaluator or plaintiffs do not agree that the proposed cure was sufficient.
- **Penalties cannot be awarded for derivative claims.** Previously, a single violation, such as underpayment of wages, could potentially result in numerous derivative penalties (so-called "stacking" of penalties), including Labor Code Sections 203 (failure to pay the alleged underpayment at the time of termination), 204 (failure to pay the underpayment in the period it was earned), and 226 (failure to list the underpayment on the wage statement for the pay period). The new law makes it clear that penalties cannot be awarded for certain derivative claims and thus helps to prevent so-called "double-dipping" of penalties.
- **To better manage PAGA claims, trial courts are given the authority to limit the scope of claims presented and evidence presented at trial.** Presently, unlike class action claims, trial courts lack authority to strike complex or time intensive PAGA claims. The new law codifies the trial court's ability to limit the scope of PAGA claims and evidence presented at trial to ensure the manageability of claims tried.



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The new PAGA law applies to actions brought on or after June 19, 2024. However, the early resolution process for employers will not be effective until October 1, 2024.

The above is a (non-exhaustive) summary of the many significant changes to PAGA brought about by the new law's passage. California employers should now be aware of the several options under the new law to avoid potential costly litigation of PAGA claims, and consult with their trusted MSK Labor & Employment attorney for further details.

Clients should also stay tuned for a forthcoming MSK webinar explaining the new changes to PAGA and how they will affect California employers.