

TYPES NOT MAPPED YET June 24, 2024 | TTR not mapped yet | John L. Viola, Emma R. Lapp

# Employer Update on California PAGA Reform

In welcome news for California employers, PAGA reform is at long last coming!

On June 18, 2024, Gov. Gavin Newsom reached an agreement with legislative leaders and labor and business groups to make some long-awaited changes to the California Private Attorneys General Act of 2004 (PAGA). Although the exact terms of the agreement have yet to be released, the Governor's office has announced that the proposed changes will incentivize employer compliance, strengthen worker protections, and streamline litigation processes. If legislation codifying these reforms is enacted by June 27 - as appears likely - the proponents of a contentious ballot measure to repeal PAGA and strengthen labor law enforcement have agreed to withdraw the measure from the November 2024 ballot.

PAGA deputizes California employees to bring civil actions on behalf of other employees against their employers for alleged Labor Code violations, which would otherwise be adjudicated by state agencies. An aggrieved employee must give their employer notice of alleged labor violations, and the employer then has 65 days to cure before the employee files a PAGA lawsuit. California employers have long struggled against unwieldy PAGA claims that drag into unmanageable and costly litigation and expose employers to millions of dollars in penalties for even relatively benign Labor Code violations.

California employers will be pleased with many of the proposed changes, including reforming the penalty structure, bolstering employee standing requirements, and streamlining litigation processes.

The proposed changes incentivize employer compliance by capping and reducing penalties. Employers who preemptively take steps to comply with the Labor Code *before* receiving a PAGA notice will see their penalties capped at 15% of the maximum applicable penalty amount. Employers who proactively take steps to cure labor violations *after* receiving a PAGA notice will see penalties capped at 30% of the maximum applicable penalty amount. The maximum penalty also will be reduced where the alleged violation was brief, or where there was a wage statement violation that did not cause confusion or economic harm to the employee. Moreover, the penalty structure will be adjusted to avoid double-penalizing employers who pay wages on a weekly basis - because penalties currently accrue on a per-pay-period basis, employers who pay weekly currently accrue penalties at double the amount than those who pay biweekly.

Many of the proposed changes also streamline litigation processes to make them more efficient and easier on employers. The proposal expands which Labor Code sections can be cured by employers and provides a more robust right-to-cure process through the Labor and Workforce Development Agency (LWDA) to reduce litigation and costs, which will particularly benefit smaller employers. The proposal also provides an opportunity for early resolution of PAGA claims in court, which would reduce costs for all employers, large and small. Additionally, the proposal also addresses derivative claims and, in response to recent case law adversely affecting employers, codifies that a court may limit the scope of claims presented at trial to ensure effective case management.

Employers will be pleased to know that the proposal narrows standing requirements for aggrieved employees as well. Under the proposed changes, and in response to adverse case law on this issue, a plaintiff-employee will only have standing to bring PAGA claims for alleged labor violations that he or she *personally* experienced, which will reduce the number of claims in a given suit. Further, the plaintiff-employee's claims will be limited to alleged violations occurring within the past year.

The proposal will also give the Department of Industrial Relations (DIR) the ability to expedite hiring and fill vacancies so PAGA claims can be processed more efficiently by the state.

The agreement reached is a mixed bag, however; not all the proposed changes are employer-friendly. The proposal allows courts to provide injunctive relief to compel businesses to remedy labor law violations. It also creates new, higher penalties on employers who act maliciously, fraudulently, or oppressively in violating labor



laws. Finally, it increases the amount of penalty money allocated to prevailing plaintiff-employees from 25% to 35%.

Next steps for this reform proposal include the California legislature drafting and passing a bill, and Gov. Newsom signing the bill into law, which is expected to happen quickly. The legislature needs to publish its bill by June 24, and the legislation must be enacted by June 27 (the deadline to withdraw the ballot measure). Be on the lookout for TC updates in the coming days.

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