

## insights

TYPES NOT MAPPED YET July 03, 2024 | TTR not mapped yet | John L. Viola, Emma R. Lapp

# PAGA Reform Brings Relief for California Employers

PAGA reform is here! [After reaching an initial agreement](#), the California legislature officially passed PAGA reform on June 27, 2024, and Gov. Gavin Newsom signed it into law on July 1, 2024.

PAGA (the California Private Attorneys General Act) 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 the alleged violation 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.

The reforms will take effect October 1, 2024, but they are not retroactive. The changes only apply to PAGA notices filed on or after June 19, 2024.

Here's what's new for PAGA:

### Higher Standing Threshold for Plaintiffs

In perhaps the most significant reform, an employee acting as a representative on behalf of similarly situated employees now must have *personally suffered* each of the violations alleged.

### One-Year Statute of Limitations

The reforms clarify that a claim is not timely unless the plaintiff experienced the violation within the previous year.

### Manageability

Employers can ask trial courts to limit what a plaintiff can present at trial or otherwise limit the scope of any claim.

### Expanded Cure Provisions

- Expands the kinds of claims that can be cured after receipt of a PAGA notice, including meal and rest break violations, non-payment of overtime and minimum wage, and expense reimbursement.
- Employers can pursue procedures to reduce or even eliminate all penalties.
- Courts will assess whether employers (1) cure and take reasonable steps to be in compliance; (2) cure only; or (3) take reasonable steps only.

### Changes in Penalties

- Penalties assessed against employers who pay weekly will be reduced by half.
- Employees can't recover penalties for derivative wage statement and waiting time penalty claims, i.e., there will be no "stacking" of penalties for certain derivative claims.
- The default penalty is \$100, instead of the existing \$100 per pay period for initial violations and \$200 per pay period for subsequent violations.

- The higher \$200 penalty is available only in the following situations:
  - The Labor & Workforce Development Agency or court has issued a finding or determination within five years before an alleged violation that the employer's policy or practice giving rise to the violation was unlawful; OR
  - The employer's conduct was found to be malicious, fraudulent, or oppressive
- Lower penalties for taking "all reasonable steps" to comply:
  - No more than 15% of the maximum penalty can be awarded if the employer took "all reasonable steps" to comply with all provisions in the PAGA notice *before* receiving the notice.
  - No more than 30% of the maximum penalty can be awarded if the employer did so within 60 days *after* receiving the notice.
- Lower penalties for certain technical violations:
  - Wage statement penalties for violations that don't cause harm or injury are capped at \$25 per pay period.
  - Penalty of \$25 per pay period for violations of the requirement to accurately list the employer's name and address, if the employee wouldn't be confused or misled about the employer's identity.
  - Civil penalty of \$50 per pay period for isolated, non-recurring events that don't extend beyond 30 consecutive days or four consecutive pay periods.
- Plaintiff's share of penalties increases from 25% to 35%.
  - Plaintiffs can also seek injunctive relief.
- Courts have discretion to award more than the maximum penalty if the award would otherwise be "unjust, arbitrary and oppressive, or confiscatory."

#### Early Evaluation Conference

- Employers can request an early evaluation conference that would stay the action while a neutral evaluator examines the employer's plan to cure.
- If the plaintiff and the neutral evaluator both accept the plan, an employer can present evidence of the cure, which effectively functions as a settlement of all or part of the action.

While PAGA has not gone away, these reforms should significantly help California employers in dealing with these expensive and time-consuming lawsuits. Employers should proactively audit their wage and hour practices to make sure they comply with California law and, if they receive a PAGA letter setting forth a claim, immediately investigate the claim and attempt to "cure" any violations to take advantage of the reforms.

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