

CALIFORNIA

California Enacts PAGA Reform

On July 1, 2024, [Assembly Bill 2288](#) and [Senate Bill 92](#) were signed into law, significantly reforming California's Labor Code Private Attorneys General Act of 2024 (PAGA). This reform removes an initiative from the state's November 2024 ballot to repeal the PAGA law. The reforms apply to PAGA matters filed on or after June 19, 2024.

Overview of the PAGA Reforms

More Stringent Standing Requirements

Before the amendments, an employee could initiate an action to pursue civil penalties for violations impacting other employees even if the employee filing the suit did not actually suffer any of the alleged violations. Under the amended law, an aggrieved employee must personally suffer each alleged violation that they are seeking to pursue on behalf of other employees **within one year** of the alleged violation (plaintiffs have argued there is no time limit for the experience of a labor code violation when bringing PAGA claims prior to the amendments). There is an exception to this requirement for employees represented by nonprofit legal aid organizations that have been involved in PAGA litigation for at least five years.

Courts' Ability to Manage PAGA Claims

The amendments provide trial courts the discretion to manage PAGA claims, including limiting the scope of any claim filed under the law or the evidence presented at trial to ensure that the claim is effectively tried. Courts can also consolidate or coordinate civil actions with overlapping facts and legal theories brought against the same employer.

Expanded Employer Opportunities to Cure

The PAGA reforms allow employers to cure alleged violations if, after receiving a PAGA notice, they take steps to revise policies and practices and make employees whole. Employers can make employees whole by paying:

- All owed wages under the specified statutes going back three years from the date of the notice;
- Seven percent interest on all owed wages;
- Liquidated damages as provided by any applicable statute; and
- Reasonable attorney fees and costs.

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Important Dates

June 19, 2024

The PAGA amendments apply to actions brought on or after June 19, 2024.

July 1, 2024

The PAGA reform bills took effect.

Oct. 1, 2024

Early resolution provisions of the PAGA reform bills become operative.

California passes two reform bills that make several significant changes to the state's PAGA law.

Curable violations include claims related to wage statements, meal and rest breaks, minimum wage, overtime and expense reimbursements.

Early Resolution Procedures

Beginning on **Oct. 1, 2024**, employers with **fewer than 100 employees** can submit a confidential proposal through the California Labor and Workforce Development Agency (LWDA) within 33 days of receiving a PAGA notice to cure one or more of the alleged violations. After a PAGA lawsuit is filed, employers with **more than 100 employees** may request to stay court deadlines and seek a neutral evaluation of the allegations during the applicable PAGA period, including a statement regarding whether the employer intends to cure the alleged PAGA violations. During the stay, the parties will work with the neutral evaluator to attempt to resolve the matter. If the neutral evaluator or employee does not agree that the employer has cured the alleged violation, the employer can file a motion requesting that the court approve the cure.

Revised Penalty Provisions

Previously, employers were subject to a civil penalty of \$100 per employee per pay period for an initial violation and \$200 for each subsequent violation. The amendments reduce the civil penalties for violations, including:

- A 15% cap on penalties where an employer demonstrates it took all reasonable compliance steps prior to receiving a PAGA notice but did not cure the violations;
- A 30% cap on penalties where an employer takes all reasonable steps to prospectively comply with the labor code within 60 days of receiving a PAGA notice but did not cure the violations;
- A \$25 per pay period for Labor Code § 226 penalties where the violation did not cause economic harm to the aggrieved employee;
- A \$50 per pay period for Labor Code § 226 penalties where the violation is isolated and did not extend beyond the lesser of 30 calendar days or four pay periods; and
- A \$200 penalty where an employer's conduct was malicious, fraudulent or oppressive, or a court or agency has determined that the policies or practices giving rise to the violation were unlawful for the last five years.

An employer's conduct will be evaluated by the totality of circumstances when determining whether it was reasonable, including considering the employer's size and resources and the nature, severity and duration of the alleged violations. "All reasonable steps" is defined to include but are not limited to an audit of wage and hour violations and actionable steps taken by the employer in response to the audit results, lawful written policies, supervisor training on applicable labor code and wage order compliance, and appropriate corrective action regarding supervisors who violate the labor code.

If an employee's regular pay period is weekly rather than biweekly or semimonthly, any penalties awarded are reduced by half to address inequities caused by assessing penalties by pay periods regardless of frequency. Aggrieved employees cannot collect derivative penalties unless they can show that the employer willfully and intentionally underpaid wages during employment.

Redistributed Civil Penalties

Prior to the reforms, aggrieved employees could be awarded 25% of the assessed civil penalties, with the LWDA receiving 75%. Under the amendments, aggrieved employees can now be awarded 35% of the civil penalties.

Injunctive Relief

Under the amendments, aggrieved employees can seek injunctive relief to compel an employer to remedy the alleged violation. The LWDA also has the discretion to seek injunctive relief against employers.

Employer Takeaways

While the PAGA amendments are more favorable to employers, they are unlikely to end PAGA lawsuits. Additionally, these reforms will likely have little effect on all PAGA matters for several months since they do not apply to matters filed before June 19, 2024. Impacted employers should continue to monitor these developments and their potential impacts and ensure that their workplace policies and practices are compliant.