

Client Insight: What Employers Need to Know About Significant Changes to PAGA – California’s Class Action-Like Law

Insights

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On July 1, 2024, California Governor Gavin Newsom signed two bills that significantly reform the California Private Attorneys General Act of 2004 (“PAGA”) and offer companies opportunities to dramatically decrease their liability for California Labor Code violations.

Key Takeaways

- 1. Reformed Penalty Structure:** Under the PAGA reform bills (“New PAGA”), employers who proactively comply with California wage and hour laws before receiving a notice of violations and those who quickly remedy violations after receiving a notice can benefit from reduced penalties.
- 2. Enhanced Right to Cure:** New PAGA expands the list of curable violations and provides a more robust right to cure process. This allows employers to correct certain violations and avoid or substantially limit penalties through curing.
- 3. Gunderson’s Employment & Labor Group’s California Wage & Hour Audit:** Gunderson clients interested in conducting attorney-client privileged California wage and hour audits can request one [here](#).

Background on PAGA

Since its inception in 2004, PAGA has created considerable challenges for companies who employ California based employees, with tens of thousands of PAGA

lawsuits filed against employers. PAGA permits an “aggrieved employee,” on behalf of themselves and other current or former employees, to file a PAGA notice with the Labor and Workforce Development Agency (“LWDA”) and sue their current or former employer for certain California wage and hour violations. An “aggrieved employee” acts as a private attorney general to pursue civil penalties on behalf of themselves, the representative group, and the State of California.

New PAGA Reduces Potential Liability Up to 85% for Proactive Employers Who Take “Reasonable Steps” to Comply with Law or Remedy Violations

New PAGA’s revised penalty structure is designed to encourage employers to proactively address and remedy violations of the California wage and hour law.

New PAGA rewards employers who take proactive steps to remedy non-compliance. Under New PAGA, employers who take “all reasonable steps” to comply with the California Labor Code **before** receiving a PAGA notice can cap civil penalties at 15% of the default penalty (\$100 per employee for each violation in a pay period). Employers who take “all reasonable steps” to comply within 60 days after receiving a PAGA notice can cap civil penalties at 30%. “Reasonable steps” include periodic payroll audits, disseminating lawful policies, and training employees and managers on California wage and hour compliance.

New PAGA Provides Employers with More Opportunities to Cure Violations and Avoid Liability

New PAGA also expands employers’ right to cure certain violations alleged in a PAGA notice, including those related to wage statements, minimum wage, overtime, and expense reimbursement claims. Until October 1, 2024, an employer can cure a violation within 33 days of receiving the PAGA notice by:

- (1) correcting the underlying violation;
- (2) making the aggrieved employees “whole” by paying: any owed wages dating back 3 years plus 7% interest; liquidated damages; and attorneys’ fees and costs as determined by the LWDA or a court; and
- (3) complying with all requirements under the relevant statutes.

Employers who successfully cure violations and take “all reasonable steps” can avoid civil penalties entirely, with cured wage statement violations incurring no penalty. Other cured claims may be capped at \$15 per employee per pay period. The specific requirements for curing violations vary from case-to-case and employer-to-employer.

Companies should also be aware that this cure option is limited to once per 12-month period for the same type of violation.

For any companies wishing to avoid liability by curing violations identified in PAGA notices received after October 1, 2024, the company must comply with New PAGA's early case resolution procedures discussed below.

New PAGA's Early Case Resolution Procedures

On or after October 1, 2024, companies with **fewer** than 100 employees during the period covered by filed PAGA notices may submit to the LWDA, within 33 days of receipt of the notice, a confidential proposal to cure the alleged violations. If the proposal is facially sufficient to the LWDA, it will conduct a conference to determine the sufficiency of the proposal and the deadline agreed upon to complete the cure. If the LWDA determines the proposal is not facially sufficient, the "aggrieved employee" may file a lawsuit. However, under New PAGA, the employer may request to stay the lawsuit pending an early evaluation conference.

On or after October 1, 2024, employers with **more** than 100 employees during the period covered by the PAGA notice, upon being served with a PAGA summons or complaint, may request a stay of court proceedings and an early evaluation settlement conference. The employer then submits a remediation plan to a neutral evaluator, and the employee submits a response to the plan. If the evaluator and the parties reach an agreement, and the employer cures any violations within the prescribed time period, this is treated as a confidential settlement of the claim. If the evaluator does not believe the violations have been cured, the employer may file a motion requesting the court to approve the cure and submit evidence showing correction of the alleged violations.

As with pre-October 1, 2024, PAGA notices, the ability to cure is limited to once per 12-month period for the same type of violation.

Important Next Steps:

California employers should take advantage of these changes by taking steps to reduce their liability under PAGA. These steps may include:

1. **Periodic Wage and Hour Audits** to ensure compliance with California labor laws. Any identified errors should be corrected immediately to benefit from the reduced penalties for proactive compliance. A request for Gunderson's Employment & Labor Group to assist with an audit is available [here](#).

2. **Updating Written Policies** to ensure compliant meal and rest breaks, timekeeping, overtime, and prohibitions on off-the-clock work. These policies should be shared and available to all employees.
3. **Training for Employees and Managers** regarding their respective obligations under California wage and hour laws.
4. **Promptly Reviewing PAGA Notices** and consulting with your Gunderson attorney to determine the best course of action.
5. **Documenting All Compliance Efforts** including audits, policy updates, training sessions, and corrective actions taken.

By taking these steps, California employers can take advantage of the New PAGA landscape and reduce exposure to civil penalties.

To learn more about New PAGA or the process for undergoing a California wage & hour audit, contact your Gunderson attorney.

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