

PAGA Reform: A Win for Employers in California

California's Private Attorneys General Act, better known as PAGA, has been in effect since 2004. PAGA allows employees to sue their employer on behalf of the state for virtually any claimed California Labor Code violation for themselves and other employees. In the twenty years since its enactment, criticism of the statute by the business community has escalated as litigation has exploded, with many business associations arguing that PAGA is overly punitive for employers while providing little benefit to employees.

By 2022, motivated by increased unhappiness with PAGA and no apparent interest by the legislature to change the status quo, several California business associations sponsored a ballot initiative titled the California Fair Pay and Employer Accountability Act (FPEAA) that would have effectively repealed PAGA. The FPEAA was on the ballot for the November 2024 election. However, to avoid a contentious and costly ballot measure campaign, Governor Gavin Newsom and business and labor groups agreed to a set of reforms to PAGA. On July 1, Governor Newsom signed the PAGA reforms (Assembly Bill 2288 and Senate Bill 92) into law.

The PAGA reforms are significant and specifically address many of the issues with PAGA. The new law does not apply to existing cases and will only apply to cases based on PAGA notices filed on or after June 19, 2024.

The most important of these reforms are outlined below:

Increased Standing Requirement

A PAGA plaintiff must now show they personally experienced each specific Labor Code violation(s) they are seeking to recover on a representative basis, rejecting *Huff v. Securitas Security USA Services, Inc.*, which held that an employee could pursue penalties affecting other employees, even if not personally affected by these violations.

One-Year Statute of Limitations

PAGA plaintiffs must have themselves suffered the Labor Code violations within the one-year statute of limitations, clearing up confusion created by some case law.

Manageability

Trial courts in a PAGA case may limit the evidence to be presented at trial or otherwise limit the scope of any claim to ensure that the claim can be effectively tried, but the reform act stopped short of saying that a PAGA case could be dismissed on manageability grounds.

PAGA Penalties

The penalties available under PAGA have been significantly altered.

- **Good Faith Dispute:** A good-faith dispute can eliminate, or significantly reduce, PAGA penalties for:
 - failure to pay all wages due upon termination of employment, and
 - wage statement facial violations that were not willful or intentional.
- **Stacking of Certain Violations Prohibited:** Courts may reduce stacked penalties for violations arising from the same payroll errors that result in a failure to timely pay wages during employment, a failure to timely pay wages upon termination of employment, and any derivative wage statement violations arising from these errors.



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- **Reduction In Subsequent Penalties:** The default PAGA penalty was \$100 for an initial violation and \$200 for a subsequent violation. The reform clarifies that the default \$100 penalty applies to all violations unless:
 1. • a court or the Labor Commissioner finds that the employer's practice or policy violated the law within the last five years, or
 2. • a court determines that the employer acted maliciously, fraudulently, or oppressively.
- **Reduction in Wage Statement Penalties:** The reform bill sets reasonable caps for technical violations of the wage statement law:
 - **Wage Statement Cap 1 (\$25):** If an employee can easily determine accurate information from the wage statement alone, the penalty is capped at \$25 per employee per pay period.
 - **Wage Statement Cap 2 (\$25):** If the only violation is failing to list the employer's name and address accurately, and the employee would not be confused or misled about who their employer was, the penalty is capped at \$25.
 - **Wage Statement Cap 3 (\$50):** If a wage statement resulted from an isolated and nonrecurring event that lasted the lesser of 30 consecutive days (for employers paying bi-weekly) or four consecutive pay periods (for employers paying weekly), the penalty is capped at \$50.
- **No PAGA Penalty For Weekly Payrolls:** PAGA penalties are based on payroll periods, effectively penalizing employers who pay weekly, but the reform act reduces the penalties by 50% for employers who pay weekly.
- **"All Reasonable Steps" Cap on PAGA Penalties:** An employer can cap PAGA penalties by showing it has taken all reasonable steps to comply with the law:
 - **Before receiving a PAGA notice or a Request for Personnel Records:** If an employer can show it took all reasonable steps to comply with the law before it received a PAGA notice or request for personnel records, penalties are capped at 15%.
 - **After receiving a PAGA notice:** If an employer can show it took all reasonable steps to comply with the law within 60 days after receiving a PAGA notice, penalties are capped at 30%. (Courts have discretion to exceed this cap if they believe that to do otherwise would result in an award that is unjust, arbitrary, and oppressive, or confiscatory.)
- **"All Reasonable Steps" is not defined but may include:**
 - Conducting periodic payroll audits and acting in response to the results of the audit;
 - disseminating lawful written policies;
 - training supervisors on applicable Labor Code and wage order compliance; or
 - taking appropriate corrective action with regard to supervisors.
 - All reasonable steps is evaluated by the totality of the circumstances, taking into consideration the size and resources of the employer, as well as the nature, severity, and duration of the alleged violations.

Ability to Cure Expanded

To lawfully cure certain violations and avoid PAGA penalties, an employer must not only correct the underlying conduct giving rise to the violation but also make employees whole. The PAGA reforms expand the type of violations that an employer can cure to include failure to provide meal and rest breaks, minimum wage and overtime violations, expense reimbursements, and additional wage statement violations.

To make an employee whole, an employer must:

1. pay employees, in full, an amount sufficient to recover any owed unpaid wages due for the prior three years;
 2. pay 7% interest; pay any liquidated damages as required by statute; and
 3. pay reasonable lodestar attorney's fees and costs which are determined by the Labor & Workforce Development Agency (LWDA) or a court (if an attorney is involved).
- **Small Employers** (less than 100 employees) ability to cure: Beginning October 1, 2024, employers with fewer than 100 employees have 33 days from receipt of the PAGA notice to

submit a confidential proposal to the LWDA describing a plan to cure the violations alleged in the PAGA notice, and the reform bill sets a procedure overseen by the administrative agency LWDA to implement an effective cure.

- **Large Employers** (more than 100 employees) may request an early neutral evaluation conference and a mandatory stay: Effective immediately, large employers who are sued under PAGA may request a stay of the case and an early neutral evaluation conference with the court to review alleged violations, whether any have been cured or any proposed cure plan. The reform bill also contains a procedure for this process.
- **Employee Share of PAGA Funds Increased:** The employees' share of any PAGA settlement or award is increased by 10% to 35%.

Next Steps for California Employers

The PAGA reform law offers significant rewards to employers who take proactive action to prevent or correct wage and hour violations before a PAGA claim. The way that an employer can take this proactive action is identified. Employers should conduct periodic payroll audits and take action in response to the results of the audit, have lawful written policies, train supervisors on compliance, and take appropriate corrective action with regard to supervisors who do not properly implement wage and hour requirements. All steps taken should be documented.

The PAGA reform rewards those who take prompt reactive action to correct and cure violations after being notified of a claim. Therefore, it is important that employers who receive a PAGA letter or a request for payroll records act promptly to see if they can cure the violations.

The PAGA reform does not change any substantive law or change any employer's obligations to employees, and does not have any effect on class action cases, but it does provide meaningful reform and provides proactive employers with new tools to forestall or reduce PAGA liability.
