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Locke Lord QuickStudy: California Employers Rejoice: California Overhauls Private Attorneys General Act (PAGA) With Support From Business and Labor Leaders

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On July 1, 2024, Governor Gavin Newsom signed AB 2288 and SB 92, which reformed the Private Attorneys General Act (“PAGA”). PAGA permits an employee who encountered a Labor Code violation to sue an employer for civil penalties on behalf of themselves individually, other “aggrieved” employees, and the State of California. PAGA includes a penalty structure under which the aggrieved employees receive a portion of the civil penalty, and the Labor and Workforce Development Agency (“LWDA”) receives the remainder. Additionally, a prevailing representative employee is entitled to their attorney’s fees and costs in pursuing the action.

The new legislation, which had been years in the making, was negotiated by lawmakers, labor organizations, and business groups, leading to the withdrawal of a November ballot initiative, which sought to eliminate PAGA actions altogether.

The changes apply to most PAGA cases filed after June 19, 2024 (excepting cases where the plaintiff submitted a PAGA claim notice prior to June 19, 2024).

Significant changes to PAGA are discussed below.

1. Employees Can Now Only Bring PAGA Claims for Alleged Labor Code Violations They Personally Experienced

An “aggrieved employee” may only bring a case for alleged violations that he or she personally experienced.

This is a major departure from the previous law. Prior to the reform, an employee could bring a PAGA case for *all* Labor Code violations suffered by other aggrieved employees so long as he or she alleged that they encountered at least one of these violations. In practice, this meant that any employee who encountered even a single Labor Code violation could bring a PAGA suit for every Labor Code violation that any other employee allegedly encountered, resulting in virtually all PAGA cases having a massive scope. With this new modification to the law, PAGA cases will likely become narrower in scope as they are limited to those alleged Labor Code violations the representative plaintiff actually encountered.

2. Employers Can Now Benefit from Taking Immediate Actions to Cure the Alleged Violations

PAGA now incentivizes employers to act quickly to remedy violations by capping the amount of civil penalties the company may be liable for in connection with the alleged violations if they take immediate action to revise their policies to be in compliance with state law. The new law imposes (1) a 15% cap on the total amount of civil penalties the employer would be liable for in connection with the alleged violations for employers who “ha[ve] taken all reasonable steps to be in compliance” with the Labor Code before receiving a PAGA notice or a request for personnel records, and (2) a 30% cap on the total amount of civil penalties the employer would be liable for in connection with the alleged violations for employers who take “all reasonable steps to be in compliance” within 60 days of receiving a notice of violation. This is a significant development in the law for employers, as companies that take advantage of this early cure mechanism can considerably limit their financial exposure for the alleged violations.

Courts will consider all the employer’s actions to determine if it took all reasonable steps to comply. The new law lists the following non-exhaustive list of “reasonable steps to be in compliance”: “conduct[ing] periodic payroll audits and [taking] action in response to the results of the audit, disseminat[ing] lawful written policies, train[ing] supervisors on applicable Labor Code and wage order compliance, or [taking] appropriate corrective action with regard to supervisors.” While not listed in the statute, other steps toward full compliance may include, for example, ensuring that all handbooks and written policies accurately reflect California labor laws, updating handbooks and policies regularly to ensure legal compliance, and addressing the importance of accurate timekeeping during all new employee training.

3. Employers Who Act Act Maliciously, Fraudulently, or Oppressively Face Stiffer Penalties

The new law establishes additional penalties for repeat offenders and for employers’ “malicious, fraudulent, or oppressive” conduct.

4. Cure Provisions and Early Case Resolution Mechanisms to Help Small Employers Who Remedy Violations Early

For small employers (employers with less than 100 total employees during the PAGA period), the new laws also provide new ways to cure certain Labor Code violations through the LWDA.

5. Courts Are Given More Tools to Manage PAGA Cases

The new statute gives courts discretion to manage PAGA actions. Courts may now “limit the evidence to be presented at trial or otherwise limit the scope of any claim filed” to ensure that the case can be tried effectively. The new statute also authorizes courts to issue injunctions to compel changes to remedy Labor Code violations.

6. Employees Receive a Greater Share of the Penalties

Under the new law, aggrieved employees’ share of the penalty increased from 25% to 35%.

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California employers should regularly review their employment practices, including those regarding meal and rest breaks, overtime pay, and wage statements, to ensure compliance with California labor laws. Employers should immediately remedy any violations they discover and given the quick turnaround time to take advantage of the cure mechanisms discussed above, should consult with their counsel immediately upon receiving a PAGA claim notice.

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