

New California PAGA Reforms Enacted



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The California legislature, the Governor, and major labor and business groups have agreed on reforms to the bane of employers since 2004: the California Private Attorneys General Act (PAGA). In late June 2024, effective immediately, various reforms were signed into law. The reforms only cover new cases filed, and do not affect any pending cases.

PAGA isn't going away, but it has been made more equitable. One of the key features of the new law is that it gives credit for employers who proactively look for and correct wage and hour violations, or act promptly after being notified of such violations; all the more reason to conduct periodic human resources audits.

The key changes:

1. Employees will now receive a greater percentage of the penalties, 35% instead of 25%. The rest generally goes to the state after covering attorney fees and administrative costs.
2. A "representative employee" must actually suffer the kinds of violations they are alleging on behalf of other employees. They can't just allege the "kitchen sink," but rather must personally experience the alleged illegal activity.
3. PAGA penalties are calculated by pay period, so if an employer had a weekly pay period, its penalties were essentially double those of employers who pay bi-weekly or semi-monthly. Now, single-week payroll employers will be subject to half the penalties. The maximum penalties will be \$100 per pay period and employees will no longer be allowed to "stack" multiple claims and attendant penalties arising out of a single violation. The additional \$200 penalty previously allowed will be reserved only for employers who willfully or repeatedly violate the Labor Code.
4. Employers who proactively take "all reasonable steps" to stay in compliance with the Labor Code will be capped at 15% of the regular penalties.
5. Once an employer has been notified of a violation, if it takes "all reasonable steps" to remedy the violation, its penalties will be capped at 30%.
6. For technical violations, such as defects on a paystub, the penalty will be capped at \$25 per pay period if the flaw did not actually injure an employee. As long as the violations are not knowing and intentional, this will preclude the much higher \$100-\$200 penalty.

7. Some violations can be “cured“ with timely action, and the requirements differ for employers with 100 or more employees versus smaller employers.
8. There is now a procedure for larger employers to have a confidential review by the court to determine whether the company has cured any claimed violations. There are short windows for some of these cure obligations, as little as 33 days, so employers need to take action quickly.

All of these reforms are significant steps toward easing employers’ burden. Nevertheless, significant penalties still exist and employers must continue to be vigilant about the law. Hotspots we routinely see are meal and rest break violations, rounding practices, failure to reimburse for business expenses (use of a personal phone to record time, e.g.), and failure to “gross up” non-discretionary bonuses. Conduct a human resources audit and get your business in compliance ASAP. That’s the best advice.