

## CALIFORNIA PRIVATE ATTORNEYS' GENERAL ACT (PAGA) RECEIVES SIGNIFICANT OVERHAUL

Jul 01, 2024

California Governor Gavin Newsom signed legislation into law, which codifies significant reforms to the Private Attorneys' General Act (PAGA). The emergency legislation, which is effective on the date of the Governor's signature, comes just days after the unveiling of a significant reform proposal approved by business groups and labor advocates. The coalition acted with urgency to head off a proposed ballot measure, which would have essentially repealed the existing law.

Among the legislation's most significant changes are:

### LEGAL STANDING AND CASE MANAGEABILITY

- Individual standing to bring a representative PAGA claim is now limited to actual violations of the labor code the **individual aggrieved employee has suffered during the one-year statutory period**.
- Not-for-profit **legal aid organizations may serve as counsel** for current and former allegedly aggrieved employees. However, the organization does not itself have standing to sue.
- Employers may seek to limit both the scope of claims (and aggrieved group of employees) and the evidence presented at trial to ensure the claims can be effectively and manageably tried in court.

### LIMITATION AND REDUCTION OF STATUTORY PENALTIES

- Penalties may be **reduced up to 85%** when an employer is engaged in reasonable steps toward compliance **prior** to a dispute.
- Determination of whether "reasonable steps" have been taken will include "consideration [of] the size and resources available to the employer, and the nature, severity and duration of the alleged violation."

- Penalties may be reduced up to 70% when an employer seeks to **remedy** potential issues following initiation of a lawsuit.
- The statutory penalty resulting from “an isolated, non-recurring event” lasting for the lesser of 30 days or four pay periods is reduced **from \$100 to \$50** per aggrieved employee per pay period.
- Heightened penalties of \$200 per pay period per violation are triggered only where: (a) an agency or court has issued a finding or determination to an employer that its **policy or practice was unlawful**; or (b) a court finds the employer’s conduct was **malicious, fraudulent, or oppressive**.
- Employers who **cure violations subsequent to a dispute** arising may be eligible for an 85%-100% reduction in civil penalties.
  - Additionally, cure processes are different for small and large employers. A “large” employer is one that employs greater than 100 employees.
- Employers with **weekly payroll calendars** are eligible for a 50% reduction in payroll-related penalties.
- Employees are precluded from seeking to collect PAGA penalties on derivative claims for **unintentional wage statement violations**.

## INCREASED POTENTIAL FOR PENALTIES AND COSTS TO EMPLOYERS

- The trial court has the discretion to deny application of the penalty-reduction mechanisms described above if the circumstances of the case suggest that their application would be **unjust, arbitrary, oppressive, or confiscatory**.
- An aggrieved employee may seek **injunctive relief** in a PAGA action.
- Employees may recover reasonable **attorneys’ fees and costs** even if an employer cures violations resulting in avoiding litigation.
- 65% of PAGA penalties will go to the State of California Labor and Workforce Development Agency, down from 75%. The share of proceeds that goes to alleged aggrieved employees is increased from **25% to 35%**.

The changes apply to civil actions filed after June 19, 2024, except for those actions in which the alleged aggrieved individual complied with the notice provisions defined by statute prior to that date.

## RELATED PRACTICE AREAS

- Class Actions
- Employment & Labor
- Retail & Consumer Products

## MEET THE TEAM



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