



PAGA

Reform

How it will affect your business and what you can do to take advantage now

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PAYROLL AND HR SOLUTIONS



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FACTS ABOUT PAGA AND ITS IMPLEMENTATION

Enacted in 2004: The Private Attorneys General Act (PAGA) was signed into law in California to address the state's limited resources for enforcing labor laws.

PURPOSE

PAGA Deputized employees to act as "private attorneys general," enabling them to file lawsuits on behalf of themselves, other employees, and the state for labor code violations, primarily wage and hour

ENFORCEMENT

PAGA shifted enforcement from the California Division of Labor Standards Enforcement (DLSE) to allowing employees to bring claims directly to court, with the assistance of attorneys

PENALTIES

The law imposed civil penalties, sharing 33% of the penalties with attorneys, the remaining amount split 75% to the Labor and Workforce Development Agency (LWDA) and 25% to employees

Applicability. PAGA applied to nearly all labor code violations, including wage and hour laws, meal and rest break violations, misclassification of workers, and payroll errors.

LABOR LAW CLAIMS SYSTEM BEFORE PAGA

- **State Enforcement Only:** Prior to PAGA, labor law violations were primarily enforced by state agencies like the DLSE and LWDA.
- **Limited Resources:** State agencies faced staffing shortages and budget constraints, resulting in delays and an inability to pursue all labor law violations effectively.
- **Employee Complaints:** Employees who experienced labor law violations had to file complaints with the DLSE, which would then investigate and decide whether to take action.
- **No Civil Penalties for Many Violations:** Many labor law violations did not include civil penalties unless specifically stated in the labor code, limiting the financial consequences for employers.
- **No Employee Representation:** Employees could not act on behalf of other employees or the state in labor law claims before PAGA. Enforcement was solely in the hands of the state.
- **Limited Legal Recourse:** Employees had fewer pathways to seek justice for minor or technical violations, as these were often deprioritized by overburdened state agencies.



Facts About PAGA and Its Implementati on

Employee Enforcement Tool: PAGA, enacted in 2004, allowed employees in California to file lawsuits on behalf of themselves, other employees, and the state for labor code violations.

Bypassing Arbitration Agreements: PAGA gave employees the right to sue even when arbitration agreements were in place, as it was treated as a representative action for the state, not a private lawsuit.

Civil Penalties for Labor Violations: Employees could recover civil penalties for labor violations, with 75% of the penalties allocated to the state's Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

Wide Range of Claims: PAGA applied to nearly all labor code violations, including wage and hour issues, missed meal and rest breaks, payroll errors, and more.

No Requirement for Harm: Employees could bring PAGA claims even for technical violations, such as missing information on pay stubs, without showing actual harm.

High Litigation Costs: PAGA led to an increase in costly class-action-style lawsuits, even for minor violations, creating significant financial and administrative burdens for businesses.

Settlement Incentives: Many businesses chose to settle PAGA claims to avoid lengthy and expensive litigation, regardless of the severity of the allegations.

Criticized for Abuses: The law faced criticism for enabling frivolous lawsuits and enriching attorneys more than benefiting employees or addressing actual workplace violations.

PAGA Reform Overview

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Key Changes: PAGA reform in 2024 limits the scope of employee lawsuits for labor violations, emphasizing arbitration and alternative dispute resolution mechanisms.

Reduced Penalties: The reform includes caps on certain penalties and narrows the types of violations that can be pursued under PAGA.

Employee Opt-Out Rights: Employees are given more opportunities to opt out of collective claims, focusing instead on individual resolutions.

State Involvement: Strengthens the Labor and Workforce Development Agency's (LWDA) oversight, giving it more authority to review and intervene in claims.

Encourages Compliance Programs: Businesses that maintain certified compliance programs may be shielded from certain PAGA claims.

Steps Businesses Need to Take to Leverage PAGA Reform

Evaluate Current Practices: Conduct a thorough review of payroll, timekeeping, and employment practices to ensure compliance with California labor laws.

Implement Compliance Programs: Establish a certified compliance program to reduce liability and benefit from new PAGA protections.

Use Alternative Dispute Mechanisms: Ensure arbitration agreements are up to date and enforceable under the new law.

Regularly Audit Employment Policies: Periodically review handbooks, policies, and procedures to address potential gaps.

Engage Legal Counsel: Work with legal experts to understand the reform and its implications for your business.

Action Steps by Applicable Wage and Hour Law

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Overtime and Regular Rate of Pay

Action Steps: Audit overtime calculations to include all forms of compensation. Ensure regular rate of pay calculations account for bonuses, commissions, and shift differentials. Implement automated timekeeping systems to minimize errors. Compliance Tip: Provide detailed wage statements to avoid miscalculation claims.

Meal and Rest Breaks

Action Steps: Review and reinforce break policies with supervisors and managers. Use timekeeping software to track and document breaks. Train employees on their rights to take uninterrupted meal and rest breaks. Compliance Tip: Pay premium wages for any missed breaks promptly

Misclassification of Employees

Action Steps: Reassess independent contractor versus employee classifications under the ABC test. Correct misclassification issues and provide back pay if necessary. Update contracts and job descriptions to reflect accurate classifications. Compliance Tip: Avoid blanket classifications for positions; assess on a case-by-case basis.

Accurate Timekeeping



Action Steps: Implement reliable time-tracking tools that capture employee clock-ins, clock-outs, and breaks. Train employees on the importance of accurate time reporting. Monitor for "off-the-clock" work practices and address them immediately. Compliance Tip: Keep digital records to simplify audits and resolve disputes.

Wage Statements

Action Steps: Conduct regular audits of wage statements to ensure all required elements are present. Include gross wages, net wages, hourly rates, hours worked, and applicable deductions. Make wage statements easily accessible to employees. Compliance Tip: Fix errors quickly to avoid penalties under PAGA.

Employee Complaints

Action Steps: Create a clear process for employees to report concerns and seek resolution. Document all complaints and actions taken to address them. Provide regular training to managers on handling employee grievances. Compliance Tip: Resolve issues internally whenever possible to reduce litigation risks.



In conclusion, navigating California's labor laws and understanding PAGA reform requires proactive measures, consistent compliance, and a commitment to fostering a fair workplace. By implementing robust compliance programs, auditing employment practices, and leveraging tools like accurate timekeeping and alternative dispute mechanisms, businesses can mitigate risks and maintain a positive workplace culture. Remember, the key to success lies in staying informed, acting decisively, and fostering open communication. Let's build workplaces that are not only compliant but also thriving environments where employees and businesses can grow together. Take these action steps today to protect your business and enhance your team's potential for success.