

Lawsuit Filed Against California's Attorney General Alleging the Private Attorney General Act ("PAGA") is Unconstitutional

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On November 28, 2018, the California Business & Industrial Alliance (an association that represents the interests of small and mid-sized businesses in California and which was formed for the specific purpose of accomplishing the appeal or reform of the Private Attorney General Act ("PAGA")) filed a lawsuit against Xavier Becerra in his official capacity as the Attorney General for the State of California for injunctive and declaratory relief in the Orange County Superior Court.

The Complaint alleges that PAGA is unconstitutional and requests that the state of California enforce its own laws – "rather than transferring the state's powers to private attorneys who operate for their own personal gain." The Complaint further asserts that PAGA has "become a tool of extortion and abuse by the Plaintiffs' Bar, who exploit the special standing of their PAGA plaintiff clients to avoid arbitration, threaten business-crushing lawsuits, and extract billions of dollars in settlements, their one-third of which comes right off the top."

The Complaint asserts nine causes of action for: (1) the violation of California's Separation of Powers Doctrine; (2) the violation of the United States Constitution's Fourteenth Amendment Procedural Due Process Protections; (3) the violation of the United States Constitution's Fourteenth Amendment Substantive Due Process Protections; (4) the violation of California's Constitutional Procedural Due Process Protections; (5) the violation of California's Constitutional Substantive Due Process Protections; (6) the violation of the United States Constitution's Eighth Amendment Excessive Fines and Unusual Punishment Protections; (7) the violation of California's Constitution's Excessive Fines and Unusual Punishment Protections; (8) the violation of the United States Constitution's Fourteenth Amendment Equal Protection of the Laws Guarantee; and (9) the violation of California's Constitution's Equal Protection Clause. The Complaint seeks a temporary restraining order and preliminary and permanent injunctions enjoining the Attorney General from implementing or enforcing PAGA. The Complaint also requests that the court issue a judgment declaring that PAGA is unconstitutional and unenforceable.

This will be a closely watched case by employers as well as employment attorneys on both the defense and plaintiff's side as the outcome of this case will have a lasting impact on how representative actions are being litigated and the penalties that are being awarded for PAGA causes of action through either judgments or settlements.

National Law Review, Volume VIII, Number 338

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