

Ask A Litigator: What Do Employers Need to Know About PAGA?

Article By:

Mia Farber

Shannon Bettis Nakabayashi

The Private Attorneys General Act (PAGA) has been in the news lately with [a proposed state Proposition seeking to reform it](#), and [the Supreme Court taking up a case regarding PAGA and arbitrations](#). Though recent developments give hope to employers that some limitations will be placed on PAGA claims, the filing of PAGA claims continues to rise, with over 6,000 PAGA notices filed in 2021.

While PAGA claims are often compared to class actions, many of the rules and regulations governing class actions are not present such as the certification process. PAGA provides employees with a private right of action against an employer in order to collect civil penalties for California Labor Code violations on behalf of the state's Labor and Workforce Development Agency (LWDA) and other aggrieved employees.

Notice and Cure Period

PAGA requires that claim notices, responses, and certain court documents be filed with the LWDA. Notice Letters are submitted pursuant to PAGA, which authorizes current and former employees to file state-wide, representative actions on behalf of themselves and similarly situated employees.

Some alleged violations can be cured. Under PAGA, a defendant company has 33 days from the postmarked date of the notice to cure these alleged violations of the Labor Code. If these violations can be cured within the 33-day period, the claims can be barred. If these violations are not cured, the Plaintiff-employee may initiate a lawsuit under PAGA. Because of this limited cure period, companies need to be alert to receipt of the notices and contact employment counsel quickly.

Otherwise, as to other alleged violations of the Labor Code, a Plaintiff may initiate a lawsuit under PAGA once 65 days have elapsed from the filing of the notice with the LWDA.

Things Employers Should Do to Protect Themselves

1. Conduct Wage and Hour Audits: Employers may be hesitant to conduct audits for a variety of

reasons. However, with the threat of collective actions like PAGA, employers must discover problems before a claim is brought.

2. Review company policies and procedures: Ensuring the company has compliant policies can potentially reduce claims but also assist in the defense of the company if claims are brought.
3. Ensure wage statements and time-keeping systems are compliant: As relatively small issues could potentially cost the company millions of dollars when multiplied across all “aggrieved employees.”

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