

New California Law Permitting Employers To Correct Some Defects In Wage Statements Unlikely To Lead To A Significant Decrease In PAGA Lawsuits

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On October 2, 2015, **Governor Jerry Brown** signed [AB 1506](#), insulating employers from ***Private Attorneys General Act*** (“**PAGA**”) lawsuits based on employee wage statements if employers cure certain defects in the wage statements within 33 days of being put on notice of them.

The law is being celebrated by some as a major development that will significantly reduce the number of PAGA lawsuits filed against California employers. Unfortunately, there may be a bit of a misunderstanding about what the new law does and how far it reaches. While it is certainly a positive step for employers that will insulate them from some PAGA claims, its impact on PAGA lawsuits will likely be minimal, at best.

PAGA allows employees to file suit against their employers for alleged violations of the California Labor Code, and to do so on behalf of all “aggrieved employees.” And it allows those employees to receive up to \$200 per person per violation. Because each pay period in which a violation occurs is generally considered to be a violation, the potential penalties under PAGA can be enormous depending on the number of different Labor Code violations alleged and the size of an employer’s workforce.

Importantly, PAGA claims are not considered “class actions.” While employers in California have been besieged by wage-hour class actions, they have also been besieged by PAGA claims addressing the same issues. Sometimes the PAGA claims are filed in the same lawsuit with the class claims; sometimes they are filed as separate lawsuits. However they are filed, PAGA claims are often little more than strategic claims meant to drive up the settlement value of class actions or to force employers to settle claims on a classwide basis.

Most PAGA lawsuits would appear to include claims based on defective wage statements. That is not going to change, at least not in any significant way, with AB 1506.

The new law does not provide that employers must be permitted to cure *all* defects in wage statements before a PAGA claim can be filed. Instead, it provides that employers must be provided a

brief opportunity to cure a couple of specific defects in employee wage statements once put on notice of those defects through a letter to the state Labor Workforce and Development Agency (“LWDA”). It is limited to the failure to specify the pay period covered by the paycheck, and the failure to provide the employer’s name or address on the wage statement. That’s it.

For employers whose wage statements don’t include one or both of those items, the new law is obviously a meaningful development. Once put on notice of those defects, they can cure them by sending out compliant wage statements for the prior 3 years.

However, the impact of the new law on the filing of PAGA lawsuits, including those with wage statement components, will likely be tiny.

Very few PAGA lawsuits are based *solely* on claims that the wage statements did not include the pay period or the employer’s name or address. Instead, to the extent individuals bring PAGA claims based on employees’ wage statements, they are typically tied to claims that employees were not paid for all time worked or did not receive premiums for missed meal or rest periods. That is, the alleged wage statement violation is that the wage statement did not accurately record all of the wages that the employee should have received. The new law will have no impact on those claims.

While AB 1506 may not have a huge impact on PAGA litigation, all employers with employees in California would be wise to take this opportunity to review their wage statements to ensure that they provide all of the items required by California law, including an identification of the pay period covered by the wage statements and inclusion of the employer’s name and address. And should they ever receive notice of the defects, they would be wise not only to cure those defects, but to do so for the prior three-year period to avoid PAGA liability for that aspect of the wage statements.

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