

Could Relief from PAGA be on the Way for California Employers?

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Since its inception more than a dozen years ago, California's Private Attorneys General Act (PAGA) has been criticized for how it has been used by plaintiff's counsel to secure (sometimes) large attorney's fees awards and penalties from employer-defendants for relatively minor Labor Code violations. Despite political pressure from the California business community, the Legislature has done little to reform the statute. Governor Jerry Brown proposed policy and procedural changes to PAGA as part of his January 2016 state budget, but those proposals were reduced to modest changes. In 2017, several PAGA reform bills were introduced but fizzled out before legislative hearings were held.

As a result of the Legislature's inability to effect changes to PAGA, and with support from California's business community, three different versions of PAGA reform initiatives were filed with the Attorney General's office on October 5. These initiatives are collectively known as the "Worker Protection and Lawsuit Accountability Act."

Version 1

This proposed initiative would, among other things:

- Repeal PAGA in its entirety.
- Give the Labor Commissioner sole authority to issue citations for civil penalties (other than where a civil penalty is specifically provided by statute).
- Distribute all civil penalties with a 50-50 split: 50 percent to the employee(s) and 50 percent to the Labor and Workforce Development Agency.
- Protect employers from penalties where they acted in good faith reliance on an administrative regulation, order, ruling, approval, or interpretation of the Labor Commissioner.
- The wholesale repeal of PAGA is unlikely. However, two additional versions of the initiative were submitted to the Attorney General's office, each imposing certain obligations and limitations on attorneys who handle PAGA claims.

Version 2

This proposed initiative would:

- Prohibit a plaintiff's attorney from contracting for or collecting a contingency fee on PAGA cases.
- Require plaintiffs' attorneys be compensated on an hourly basis and at a rate that may not exceed 150 percent of the rate charged by the Attorney General.
- Require that plaintiffs' attorneys' billed hours be subject to court review and approval.
- Provide that a PAGA action may only be brought by an employee who has personally suffered an actual injury under each and every action contained in the complaint.
- Limit discovery in PAGA cases to information regarding employees in the same job classification and the same geographic location as the representative.
- Require all complaints for violation of labor laws be submitted under penalty of perjury.
- Provide that in any year in which an attorney files a PAGA lawsuit, the attorney shall complete an additional eight hours of legal ethics training.

Version 3

The final proposed initiative mirrors the second, with the following slight differences:

- Only a "willful" violation of the law will subject an employer to PAGA penalties.
- Contingency fees for Plaintiffs' attorneys handling PAGA cases will be limited to 25 percent for the first \$100,000 awarded, and 12.5 percent for damages collected above the \$100,000 threshold.

While these initiatives are likely to be viewed as positive developments for employers, it could be years before Californians vote on any of these PAGA reform initiatives.

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