

Sweeney Mason

LLP

News Alert: 2024 PAGA Reform

Roger M. Mason, Esq., Chris J. Olson, Esq. Rachael E. Brown, Esq., Caitlin E. Kaufman, Esq.

On July 1, 2024, Governor Newsom signed into law [AB 2288](#) and [SB 92](#), both of which significantly reform the California Private Attorneys General Act of 2004 (PAGA) by allowing for early evaluation and resolution procedures, revising and reducing the penalty structure, and imposing standing and manageability requirements in PAGA litigation. These changes apply to PAGA actions arising from notice made to the Labor and Workforce Development Agency (LWDA) on or after June 19, 2024.

PAGA was enacted in 2004 and to allows individual employees to “stand in the shoes of” the state attorney general to recover civil penalties of \$100 per violation for initial violations and \$200 for subsequent violations, plus costs of suit and attorney’s fees (typically 33-40% of any total settlement amount), on behalf of themselves and other “aggrieved” employees for many Labor Code violations. Historically, 75% of the recovered penalties are paid to the LWDA and 25% are paid to the aggrieved employees.

Since its enactment, critics have argued that the steep PAGA penalties for even the most innocent violations and low bar for standing to bring said actions are unfair and have encouraged Plaintiffs’ attorneys to create a cottage industry that benefits only the attorneys and harms California businesses. As a result, PAGA reform has long been discussed and was most recently proposed as a ballot measure for this November’s election. Instead, Governor Newsom reached a much-needed agreement with business groups and legislated leadership to avoid a contentious and potentially confusing ballot measure.

Early Evaluation and Resolution Procedures:

Large Employers - The new law provides that when a PAGA lawsuit is filed in court, employers may request an early evaluation conference. The request must identify which allegations the employer disputes and include a statement about whether the defendant intends to cure the alleged violations. This request pauses the litigation while the parties attempt to reach a settlement.

Small Employers - Starting October 1, 2024, if an employer who employed fewer than 100 employees during the PAGA period submits a proposal to cure the violations within 33 days of receiving the PAGA notice, the agency will determine whether the proposed cure is sufficient to end the litigation.

Standing: Until now, courts have permitted plaintiffs to bring PAGA claims for any Labor Code violation, even if they did not personally experience the violation, so long as they suffered at least one violation. Under the new law, a PAGA plaintiff must have personally suffered each Labor Code violation for which penalties are sought.

Revised Penalty Structure: This is the most significant change to the PAGA rules.

LWDA Share of Penalties Decreased

The LWDA's share of the penalties has decreased to 65%, down from 75%. Aggrieved employees will now receive 35% of the total penalties.

Reduction in Penalty Amount

Reduced \$25 Penalty - Violations of Labor Code §226 are now capped at \$25 for each aggrieved employee per pay period if the employee can promptly and easily determine from the wage statement alone the required missing information constituting the technical violation.

Reduced \$50 Penalty - The penalty will be reduced from \$100 per violation to \$50 per employee, for alleged violations that "resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or 4 consecutive pay periods."

Revised \$200 penalty – The penalty for subsequent violations will now be limited to violations where the court determines that the employer's conduct was "malicious, fraudulent, or oppressive" and that the violation occurred within 5 years of an LWDA or court finding that the employer's policy or practice was unlawful.

50% Reduction – There is now a 50% reduction in penalties for employers who pay weekly, to correct the inequality in the PAGA law created by calculating penalties per pay period rather than per week.

No Stacking of Penalties - Derivative/stacked penalties are now eliminated. Plaintiffs cannot collect penalties for violations of Sections 201 – 204 and Section 226 that are in addition to the civil penalty collected for the underlying unpaid wage violation.

Caps on Penalties

15% cap on penalties if the employer took reasonable steps to comply with the Labor Code before receiving a PAGA notice.

30% cap on penalties if the employer took reasonable steps to comply with the Labor Code within 60 days after receiving a PAGA notice.

“Reasonable Steps” include whether the employer “conducted periodic payroll audits and took action in response to the results of the audit, disseminated lawful written policies, trained supervisors on applicable Labor Code and wage order compliance, or took appropriate corrective action with regard to supervisors,” evaluated by the totality of the circumstances, and considering the employer’s size and resources, and the nature, severity, and duration of the violations.

Ability to Cure

Employers who take “all reasonable steps” to comply with the Labor Code provision either before or within 60 days after receiving a PAGA notice AND who “cure” a violation shall not be required to pay a penalty for the violation.

All other employers who “cure” alleged violations shall now pay a penalty of no more than \$15 per employee per pay period.

To cure a violation, an employer must correct the violation, make each aggrieved employee whole, and comply with the underlying statutes specified in the LWDA notice.

Employees who are owed wages are “made whole” when they receive an amount sufficient to recover any owed unpaid wages dating back three years from the date of the notice, plus 7% interest, any liquidated damages as required by statute, and reasonable attorneys’ fees and costs to be determined by the agency or the court.

An employer who cures a violation of Section 226(a) shall not be required to pay a civil penalty for that violation. To cure wage statement violations, employers may be required to provide written notice of the correct name and address of the employing entity, or provide a fully compliant, itemized wage statement to each aggrieved employee for each pay period during which the violation occurred dating back 3 years from the date of the notice.

Manageability: Class actions have always allowed courts to consider the manageability of class claims, while PAGA claims have always been exempt from this analysis. Now, courts have the authority to dismiss with prejudice, or limit the scope of PAGA claims based on a lack of manageability.

What Should Employers Do Now: There are two essential steps employers can take before an LWDA notice is filed that can significantly reduce the potential liability for any PAGA exposure:

1. Perform a Comprehensive HR Compliance Audit – An initial compliance audit and yearly re-reviews of all company policies will reduce and possibly eliminate PAGA penalties. Sweeney Mason conducts these audits and provides certifications of compliance for just this purpose. Contact us today to schedule an Audit.
2. Train Supervisors and Managers – Routine, documented manager training on California law and company policies can demonstrate compliance and minimize penalties. Sweeney Mason conducts and facilitates such trainings, which should be done on a regular basis to maximize effectiveness.

What Employers Should Do After Receiving a PAGA Notice: Immediately review the PAGA notice and send it to counsel for discussion about next steps, which will likely include taking advantage of the early resolution procedures and opportunity to cure. Keep in mind the 33-day deadline to cure.

For more information about any of these employment legal updates, including information about conducting an HR Compliance Audit and/or Management Training, please contact our employment team at 408-356-3000 or via email: Roger Mason at rmason@smlp.com, Chris Olson at colson@smlp.com, Rachael Brown at reb@smlp.com, or Caitlin Kaufman at ckaufman@smlp.com.



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP is a Limited Liability Partnership located at 983 University Avenue, Suite 104C, Los Gatos, California, 95030, telephone (408) 356-3000. This notice is designed to assist our clients and other business owners in spotting issues which may result in costly litigation and court awarded damages if allowed to continue unaddressed.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

Sweeney Mason LLP
983 University Ave, Suite 104C | Los Gatos, CA 95032 US
408.356.3000
www.smllp.com