

California Voters to Decide Future of California's Controversial Private Attorneys General Act

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A bill on the ballot in California this November asks the state's voters to give the controversial Private Attorney General's Act (PAGA) a final approval or rejection. The bill, called the California Employee Civil Action Law Initiative (CECALI), is backed by a pro-business political action committee, and the initiative recently qualified for the Nov. 5 state ballot after it received more than 700,000 valid signatures in its support.

As we have reported many times over the years (see, e.g. our articles written on [June 16, 2022](#), [April 5, 2022](#), and [December 17, 2021](#), [February 25, 2020](#), and [March 28, 2019](#)) PAGA is a controversial law unique to California which has been tested in both the California Supreme Court and United States Supreme Court on several occasions. PAGA gives individual employees the right to step into the shoes of both the California Attorney General and certain other "aggrieved employees" to enforce provisions of California's Labor Code. PAGA has been hotly debated in employment-law circles ever since it was signed into law in 2003 by then Governor Gray Davis five days after he was recalled by California voters. Many argue that PAGA does more to benefit the California Plaintiff's bar than it does employees in the state.

If adopted by voters, CECALI would repeal PAGA and replace it with new legislation that would permit the Labor Commissioner, only, to award penalties under CECALI. Those penalties are: (1) whatever statutory penalty amount is set forth in the Labor Code or \$100 per pay period for the initial violation and \$200 per pay period for each subsequent violation. In addition, CECALI doubles the statutory penalties for all willful violations under both the Labor Code and CECALI. Importantly, the law requires that 100% of monetary penalties assessed be awarded to employees, while barring Plaintiffs' attorneys from recovering any fees unless otherwise specified by California's labor code. Under PAGA's current framework, only 25% of penalties assessed go to employees while the remaining 75% is earmarked to the California Labor and Workforce Development Agency. In addition, PAGA permits the recovery of attorneys' fees. The new law would also provide resources to employers to ensure that they can comply with state labor laws, a significant benefit to California employers already burdened by the state's byzantine labor code and associated regulations.

Given the significant competing interests at issue, CECALI is by no means a sure winner in November. Regardless of the outcome, Benesch's Labor and Employment group will continue to monitor all PAGA updates, as well as other ballot initiatives that could impact California employers, and will report on all relevant matters here.

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