

PAGA Reform Package Strikes Balance: Boost for Workers, Relief for Employers

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As we reported here, California voters had been tasked with deciding the future of California's controversial Private Attorneys General Act ("PAGA").

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. Under the current law, workers can collect a quarter of the monetary penalties for state labor law violations, and the rest of the recovered funds go to the California Labor and Workforce Development Agency. These cases can be extraordinarily expensive for employers, with some reports suggesting that the law has cost employers in California close to \$10 billion since the law's implementation in 2003.

As of June 19, 2024, however, it appears that major power brokers in the state, including Governor Gavin Newsom, Senate President pro Tempore Mike McGuire, and Assembly Speaker Robert Rivas, and other entities representing both employer and employee interests, have struck a deal in the form of a PAGA reform package that could take the PAGA issue off the ballot this fall.

According to proponents of the deal, the reforms to PAGA will ensure workers in California continue to have a strong vehicle to get labor claims resolved, while also limiting the frivolous litigation that has cost employers billions over the last 21 years. While the text of any new or amended legislation is not yet available (but is anticipated next week), key elements of the reform package reportedly include:

- An increased share of penalties going to employees (from 25% to 35%)
- Requires that the plaintiff who files a PAGA claim must have actually suffered an alleged labor code violation
- Limits the violations that can form the basis of a penalty award to those occurring in the last year
- Limits, in certain situations, penalties to 15% of the applicable penalty amount
- Reduces maximum penalties related to wage statement violations that did not cause confusion or harm to the employee

The reform package also includes an employer right to cure and provides an opportunity for early resolution.

While the reform package's announcement should be welcome news to employers in California, the fight against PAGA is not finished. The California Legislature must act on the reform package, and it must be signed into law by Governor Newsome, on or before June 27. If that does not happen, the Fix PAGA Coalition will keep its PAGA reform measure on the November ballot, and voters will be asked to weigh in on the law at the polls.

Benesch was honored to have been involved in the negotiations for this monumental deal via our association with the California Retailers Association. We will continue to monitor the proposed legislation and its potential impacts.

For more information, contact a member of Benesch's Labor & Employment Practice Group or Stephanie Sheridan from the Retail & E-Commerce Group, who serves on the Board of Directors for the California Retailers Association.

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