

PAGA Warriors: A Business Threat 360

Nowland Law has handled
dozens of PAGA claims. Here's
how to get to the other side.



NOWLAND LAW

// ADDRESS

20241 SW BIRCH ST #203
NEWPORT BEACH,
CALIFORNIA 92660

// PHONE | WEB | EMAIL

P : 949.221.0005
W : WWW.NOWLANDLAW.COM
E : TEAM@NOWLANDLAW.COM

CONTENTS >

// INTRODUCTION

II. Navigating PAGA Litigation: Process, Stakes,
and Potential Outcomes

III. PAGA Hotspots: High-Risk Areas for
Employers

IV. Building Your Shield - Part 1: Proactive
Labor Law Audits and Compliant Policies

V. Building Your Shield - Part 2: Cultivating an
Enduring Culture of Compliance

VI. Strategic Responses and Defense When
PAGA Claims Arise

VII. PAGA's Reach: Understanding Scope,
Application, and Covered Violations

VIII. Conclusion: Maintaining Vigilance and
Long-Term PAGA Preparedness

INTRODUCTION

Welcome I. The Private Attorneys General Act (PAGA): An Introduction for California Employers

The Private Attorneys General Act (PAGA), codified in California Labor Code sections 2698 et seq.



// WHAT IS PAGA?

Understanding PAGA: Purpose and Mechanism

The Private Attorneys General Act (PAGA), codified in [California Labor Code sections 2698 et seq.](#), is a unique law that many other states have no equivalent of.

It empowers private sector employees to act as private attorneys general to recover civil penalties for Labor Code violations on behalf of themselves, other current or former "aggrieved" employees, and the State of California. PAGA was intended to augment the state's limited enforcement resources, allowing individuals to pursue penalties that were previously only recoverable by state labor law enforcement agencies.



Why PAGA Compliance is Non-Negotiable

For California employers, meticulous adherence to the state's extensive Labor Code is not merely good practice—it is a fundamental business necessity. PAGA significantly raises the stakes for non-compliance.

A single alleged violation, affecting multiple employees, can escalate into a costly and complex representative action, exposing businesses to substantial financial liabilities and operational disruptions. Proactive compliance is the most effective strategy to mitigate these considerable risks.

The High Cost of Non-Compliance: Penalties and Beyond

Non-compliance with California labor laws can lead to severe consequences under PAGA. Default civil penalties are typically \$100 per aggrieved employee per pay period for an initial violation of a Labor Code provision, and \$200 per aggrieved employee per pay period for each subsequent violation (Cal. Lab. Code § 2699(f)(2)).

Beyond these statutory penalties, employers may also be liable for the plaintiffs' attorneys' fees and costs (Cal. Lab. Code § 2699(g)(1)). The cumulative financial impact, coupled with potential damage to reputation and employee morale, underscores the critical importance of robust compliance efforts. Recent legislative updates in 2024 have also adjusted penalty considerations and emphasize employer diligence

NAVIGATING PAGA: PROCESS, STAKES, OUTCOMES

A PAGA action formally commences when an aggrieved employee, or their representative, provides written notice to the Labor and Workforce Development Agency (LWDA) and, by certified mail, to the employer (Cal. Lab. Code § 2699.3(a)).

This notice must detail the specific Labor Code provisions allegedly violated and the facts and theories supporting these allegations.

The LWDA has a period to investigate or to notify the employee that it does not intend to do so (Cal. Lab. Code § 2699.3(a)(2)(A)), which generally requires court approval (Cal. Lab. Code § 2699(l)(2)).

If the LWDA does not pursue the matter, or after specified timeframes, the employee may file a civil lawsuit (Cal. Lab. Code § 2699.3(a)(2)(A)), discovery, motions, and potentially a trial or settlement, which generally requires court approval (Cal. Lab. Code § 2699(l)(2)).

PAGA litigation can be complex, because each violation and each code must be assessed under case law. It also must demonstrate or allege a class violation.

// THE STAKES OF A PAGA ACTION

PAGA lawsuits can pose a significant threat to businesses. The potential for substantial aggregated civil penalties, particularly where numerous employees and multiple pay periods are involved, represents a major financial risk. Beyond penalties, employers face the costs of legal defense, which can be considerable.

Operationally, managing PAGA litigation demands significant management time and internal resources. Furthermore, public PAGA actions can negatively impact a company's reputation among customers, stakeholders, and current and potential employees.

// PAGA PENALTIES

If a PAGA claim is successful, or if a settlement is reached, the resulting civil penalties are distributed according to a specific formula: originally 75% of the collected penalties were paid to the LWDA and 25% distributed among the aggrieved employees (see prior versions of Cal. Lab. Code § 2699(i)). Recent 2024 PAGA reforms adjusted this split for new cases, with 65% allocated to the LWDA and 35% to aggrieved employees (employers should verify the applicable version of the statute for their specific circumstances, but the [principle of split distribution remains.](#))

This distribution mechanism highlights PAGA's dual role in compensating employees and funding state enforcement efforts.

// PAGA HOTSPOTS

// WAGE & HOUR

Violations of California's wage and hour laws are among the most frequent catalysts for PAGA claims. This includes, but is not limited to, failure to pay minimum wage or overtime correctly improper calculation of the regular rate of pay for overtime purposes, failure to provide compliant meal and rest breaks or compensation in lieu thereof, and inaccurate timekeeping.

// WORKPLACE SAFETY

Failure to maintain a safe working environment, as mandated by Cal/OSHA (Cal. Lab. Code § 6300 et seq. and other Labor Code provisions, can also lead to PAGA claims. This encompasses issues such as inadequate safety equipment, insufficient training, failure to implement required safety programs, or unaddressed workplace hazards.

DISCRIMINATION, HARRASSMENT, RETALIATION

While PAGA itself does not create new protected classes, violations of Labor Code sections that prohibit retaliation for engaging in protected activities or those intertwined with discrimination or harassment can form the basis for PAGA penalties if those sections also carry civil penalties or are linked to penalty-bearing provisions.

// RECORD KEEPING & WAGE STATEMENTS

California Labor Code section 226 mandates strict requirements for itemized wage statements. Inaccuracies or omissions in wage statements are a common source of PAGA claims, often cited alongside other wage and hour issues.

General failures in maintaining accurate and complete employment records (e.g., time records [as required by IWC Wage Orders](#).) can also expose employers to liability and complicate defense efforts.

// PROACTIVE LABOR LAW AUDITS & COMPLIANCE POLICIES



// AUDITS

A proactive and privileged labor law compliance audit, ideally conducted under the direction of legal counsel, is an indispensable tool for California employers. Such audits help identify potential areas of non-compliance before they escalate into PAGA claims or other legal disputes, allowing businesses to understand and mitigate their risk profile.



// FOUR STEPS FOR LABOR LAW AUDITS

A thorough audit involves a systematic review of employment policies, practices, and records. Key steps include:

1. Identifying all applicable California (and local) labor laws and regulations (e.g., California Labor Code,

2. Scrutinizing written policies, employee handbooks, and employment agreements for compliance.
3. Evaluating actual day-to-day practices (e.g., timekeeping, payroll, meal/rest breaks, employee classification, reimbursement practices, safety protocols) against legal requirements and written policies.
4. Assessing record-keeping practices for accuracy and completeness

// AFTER THE AUDIT

Identifying compliance gaps is only the first step. An effective audit will conclude with a concrete action plan to address and remedy any deficiencies. This may involve policy revisions, changes in operational procedures, additional training, or other corrective measures, implemented promptly and thoroughly.

Clear, comprehensive, and consistently enforced workplace policies that are fully compliant with California law are foundational to minimizing PAGA exposure. These policies should be easily accessible to all employees and regularly reviewed and updated to reflect changes in the law.

// CULTIVATING A CULTURE OF COMPLIANCE

> LEADERSHIP

A genuine culture of compliance begins at the top. When senior leadership visibly champions and invests in ethical conduct and adherence to labor laws, this commitment permeates the organization and reinforces the importance of compliance at all levels.

> TRUST

Employers should establish and promote accessible, confidential, and effective internal complaint mechanisms that let employees to raise concerns about potential Code violations without fear of retaliation. A non-retaliation policy is essential. Addressing issues internally can often prevent them from escalating into PAGA claims.

> TRAINING

Ongoing training for managers, supervisors, and employees on relevant California labor laws is crucial. Managers require detailed training on wage and hour rules, leave management, anti-discrimination and anti-harassment obligations, and proper handling of employee complaints to ensure they can implement policies correctly and identify potential issues.

STRATEGY – INITIAL RESPONSE TO A PAGA NOTICE

Prompt Investigation and Assessment

Upon receipt of a PAGA notice from an employee or the LWDA it is imperative to act swiftly. This includes immediately engaging legal counsel and conducting a thorough investigation into the specific factual allegations and Labor Code provisions cited in the notice. Understanding the scope and potential merit of the claims early on is crucial for developing an effective response strategy.

California law allows employers to "cure" certain alleged Labor Code violations after receiving a PAGA notice but before a lawsuit is filed, potentially avoiding or reducing civil penalties for those specific violations.

For example, Labor Code section 226(d) provides a mechanism to cure certain wage statement violations. Recent legislative updates in 2024 significantly expanded and modified these cure provisions and processes for other types of violations.

. It is critical to consult with legal counsel to determine if any alleged violations are eligible for cure and to navigate the specific procedural requirements, which are strict and time-sensitive (see generally Cal. Lab. Code § 2699.3(c)).

In some circumstances, it may be possible to resolve underlying individual claims or even PAGA claims with affected employees before or early in litigation.

However, the law surrounding the extent to which individual settlements or arbitration agreements can bar or limit subsequent PAGA representative actions is complex and continually evolving. Significant court decisions (such as *Viking River Cruises, Inc. v. Moriana* by the U.S. Supreme Court, and subsequent California Supreme Court clarifications like *Adolph v. Uber Technologies, Inc.*) shape this landscape. Strategies involving individual settlements must be carefully considered with legal counsel in light of current case law and the overarching PAGA framework, which emphasizes claims brought on behalf of the state. Court approval is generally required for PAGA settlements

Challenges To PAGA

The PAGA framework itself has faced, and may continue to face, various legal challenges, including those related to its constitutionality or specific procedural aspects. While the outcomes of such broad challenges can be uncertain, employers, through their legal counsel, should remain informed about significant legal developments and appellate cases that might impact PAGA litigation strategies. A passive approach is seldom effective; defense strategies should be comprehensive and informed by the latest case law.

// AGGRIEVED EMPLOYEE

Under PAGA, an "aggrieved employee" is defined as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed".). Any such aggrieved employee can initiate a PAGA action after exhausting the pre-filing notice requirements with the LWDA and the employer



// PAGA'S FORM

PAGA is not limited to a specific subset of labor laws. It allows employees to sue for civil penalties for violations of a vast array of provisions throughout the California Labor Code provided those provisions either carry their own civil penalty or PAGA's default penalties apply (Cal. Lab. Code § 2699(a), (f)). This includes, but is not limited to, laws governing wages, hours of work, meal and rest periods, employee classification, reimbursements, wage statements, safety standards, and more.

// PAGA SCOPE

PAGA serves as an enforcement mechanism for many fundamental employee rights in California. This includes the right to be paid at least minimum wage, receive overtime pay, take compliant meal and rest breaks, receive accurate itemized wage statements, be reimbursed for necessary business expenses work in a safe environment, and be free from unlawful retaliation for exercising labor rights.

// PAGA Plaintiff Strategy

Why is PAGA on the rise? For employees seeking a pay-out, or for plaintiff employment lawyers seeking to generate cases, PAGA's ability to turn the allegation of a labor violation into (essentially) a CLASS ACTION, allows many more instances where individual damages may have been too small to pursue before, but now would be a much greater financial impact with many employees in a class. **Thus, it increases the calculus for companies to simply settle with the claimant.**

CONCLUSION

Key Takeaways and Actionable Insights for California Employers

The Private Attorneys General Act represents a substantial and ongoing compliance challenge for California employers. Key takeaways include the critical need for proactive measures, such as regular audits and robust policy implementation, the importance of prompt and strategic responses if a PAGA notice is received, and the value of fostering a strong internal culture of compliance. Staying informed about evolving legal interpretations and legislative changes (such as the PAGA reforms of 2024) is also paramount.

The Ongoing Commitment to Labor Law Excellence and PAGA Risk Mitigation

Effectively managing PAGA risk is not a one-time task but an ongoing commitment. It requires continuous vigilance, regular review and updating of policies and practices in consultation with legal counsel, and a dedication to treating employees fairly and in accordance with California's complex labor laws. Such diligence is the best defense against costly PAGA litigation and contributes to a more stable and productive workplace.

This guide is intended for general informational purposes only and does not constitute legal advice or create an attorney-client relationship. The information provided herein, including any references to legal statutes or web links, is general in nature and may not apply to your specific business or factual circumstances, or may have been updated or changed since the time of writing. California labor laws, including PAGA, are complex and subject to frequent changes through legislation and court decisions. URLs provided may also change over time.

Readers should not act or refrain from acting on the basis of any information contained in this guide without seeking appropriate legal or other professional advice on their particular facts and circumstances from a qualified attorney licensed in their jurisdiction. You should consult with competent legal counsel to obtain advice with respect to any particular legal matter, including the most current developments in PAGA law and potential defense strategies.

26/2027

// WHITEPAPER 26/2027



DESIGN
SOUL

// ADDRESS

YOUR STATE,
YOUR CITY NAME
COUNTRY.

// PHONE | WEB | EMAIL

P : +975 . 3044 . 2055
W : WWW.YOURWEBSITE.COM
E : COMPANY@E-MAIL.COM