Better Late Than Never: California Adopts Groundbreaking Reforms to California Private Attorneys' General Act

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On July 1, 2024, California Governor Gavin Newsom signed groundbreaking legislation that will provide immediate and significant reform to California Private Attorneys' General Act – also known as PAGA – and offered much-needed relief to employers. After a realization that a PAGA-related proposition set to appear on the November 2024 ballot which sought to end PAGA outright would likely fail, lawmakers sought a compromise with the labor advocates and business groups on revisions to PAGA. This legislation will limit the types of employees who could bring claims, give employers a better chance to cure mistakes, reduce possible penalties, and boost procedural mechanisms that would reduce claims in court.

Here are the key revisions which employers should be aware:

1. **Significant Reduction of Penalties**: PAGA currently provides a civil penalty under PAGA of $100 "for each aggrieved employee per pay period for the *initial* violation" of certain provisions of the California Labor Code. PAGA also currently allows for a PAGA penalty of $200 per pay period for each "subsequent violation." The new legislation removes the term "initial" and alternatively applies a $100 per pay period penalty for **all** violations subject to various reductions, including:

    - 85% reduction of the $100 per pay period penalty when the employer takes "all reasonable steps" to be in compliance with Labor Code prior to a dispute arising, meaning before receiving an employee records request or an administration complaint filed with the California Labor Workforce Development Agency (LWDA)

    - 70% reduction of the $100 per pay period penalty when the employer take "all reasonable steps" to comply with the law after receiving a PAGA lawsuit.

    - 50% reduction of the $100 per pay period penalty if the alleged violation "resulted from an isolated, non-recurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods" for the allegedly aggrieved employee.

The definition of "all reasonable steps" will vary based on the type of reduction sought but will generally include conducting periodic payroll audits and taking action in response to the results of the audit, disseminating lawful written policies, training supervisors on applicable Labor Code and wage order compliance, or taking appropriate corrective action regarding supervisors. The audit, however, will not be privileged and will be available for review by plaintiff's counsel.

The $200 per pay period penalty still exists. However, it will only be assessed when either any agency or court has issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful within the five years preceding the alleged violation or if the court finds the employer's conduct was malicious, fraudulent or oppressive.

2. **Curing Paystub Violations**: An employer who cures (i.e., fixes) any wage statement violations under Labor Code section 226(a) shall not be required to pay any civil penalty. In all other circumstances where an employer properly cures utilizing the various processes under the proposed legislation but does not take the described "reasonable steps," any civil penalty shall be no more than $15 per employee per pay period during the applicable statute of limitations.

3. **Curing Any other Violations**: For any other violations, the new law also creates cure processes to allow employers to fix violations to avoid costly litigation. However, it does not offer complete reprieve and there are different processes for small and large employers:

    a. Employers with less than 100 employees: Within 33 days of receipt of a notice from the LWDA, an employer may submit a confidential proposal to cure one more of the alleged violations. These "small" employers will undergo a multi-step review process with the LWDA.

    b. Employers with 100 or more employees: Once a lawsuit is filed, an employer will be entitled to seek an early evaluation conference in court. The employer will file an application indicating whether it intends to cure any or all the alleged violations and the process to cure such alleged violations. This will also be a multi-step process for review but by the civil court rather than LWDA.

While the new employers will be able to fix any issues, it will come at a cost. To cure, employer will be required to pay any owed unpaid wages specified in the LWDA notice dating back 3 years (plus 7% interest) from the date of the notice. In addition (because of course), an employee will still be entitled reasonable lodestar attorneys' fees and costs to be determined by an agency or court, even when a cure is proper and civil litigation is avoided. All communications as part of this process are intended to be privileged settlement communications that could not be introduced in court. However, the plaintiff will have the right to challenge the cure and will have access to the cure proposal.

4. **Name Plaintiff Must Have Same Damages**: An issue that really irked employers was an employee only had to allege one distinct violation and could represent an entire class of employees for violations that employee did not suffer. For example, an individual who only experienced meal period violations, for example, could also seek penalties for those individuals that were subject to overtime pay violations. The new legislation closes that gap and now requires the employee personally suffered the same purported violations as other alleged aggrieved employees.

5. **No Retroactivity**: Unfortunately, the new legislation will not apply to all pending PAGA litigation. The reduced penalties set forth in the reform measure will not apply to any pending litigation matters or where notice was given to the LWDA prior to June 19, 2024.

6. **Limiting Liability for Weekly Payroll**: Previously, employers who paid payroll on a weekly basis were unjustly punished as PAGA applies civil penalties based on pay periods. However, the new legislation will right that wrong and reduce by one-half potential penalties if the employees' regular pay period is weekly rather than bi-weekly or semi-monthly.

This is just an overview of the legislation and there is much more to this law, which will continually develop over the coming months and years as its interpreted by courts. Now that is legislation is live, employers should immediately commence processes and take "reasonable steps" for your organization to avail yourselves of these welcome changes, including updating your handbook, conducting audits, and training your employees. You should also immediately consult your legal counsel to ensure that the processes are consistent with legal obligations.