



March 15, 2021

The Honorable Heath Flora  
California State Assembly  
State Capitol, Room 3098  
Sacramento, CA 95814

**SUBJECT: AB 385 (FLORA) PRIVATE ATTORNEYS GENERAL ACT: MUTUAL ARBITRATION WAIVER SUPPORT**

Dear Assembly Member Flora:

The California Chamber of Commerce and the organizations listed below are pleased to **SUPPORT** your **AB 385 (Flora)**. **AB 385** will provide much-needed relief to businesses facing litigation during COVID-19 by amending the Labor Code Private Attorneys General Act (PAGA) so that an employee who files a civil claim that is subject to an arbitration agreement may not pursue a PAGA claim where the employer voluntarily chooses not to enforce the arbitration agreement.

Thousands of PAGA lawsuits are filed every year. An employee can bring a PAGA claim against employers for any Labor Code violation as long as that employee alleges they experienced one violation. *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018). By way of example, an employee who alleges they missed one rest break can then sue for missed meal breaks, overtime wages, business expense reimbursements, wage statement penalties, waiting time penalties, and more on behalf of all California employees.

The breadth of the law and resulting case law has allowed attorneys to abuse PAGA by threatening employers with costly litigation for alleged Labor Code violations to secure a financial settlement, with the majority of proceeds going to the attorney and not the injured employees or the state. Even the Department of Industrial Relations and Labor and Workforce Development Agency (LWDA) recently noted “the failure of many private plaintiff attorneys’ to fully protect the interests of the aggrieved employees and the state” after reviewing over 1,000 PAGA settlements.

When COVID-19 hit California in 2020, employers had to change their business operations in order to comply with safety orders and protect employees from unnecessary exposure. California’s Labor Code was not designed to address a pandemic like COVID-19. For example, many of the laws are difficult to satisfy in a remote work environment, leaving employers unfairly exposed to PAGA litigation. California presently leads the nation as far as COVID-19 employment-related lawsuits, with many having been filed against small businesses.

One of the primary concerns opponents to PAGA reform have raised is that PAGA allows employees to avoid mandatory arbitration agreements, as courts have held that such agreements cannot be applied to PAGA claims, and therefore reforming or limiting PAGA impacts employees’ opportunity to avoid arbitration.

**AB 385** directly addresses that issue and provides that an employer who agrees to waive the right to enforce an arbitration agreement for claims arising during the pandemic cannot be subject to PAGA penalties. This provides employees a pathway for relief with the Labor Commissioner or civil court, but avoids penalizing employers for violations that occurred as they were trying to address the changing environment of this pandemic.

COVID-19 has been devastating to California’s business community. Those that have survived the last year continue to struggle to keep their doors open. **AB 385** is an innovative solution to help employers and employees address workplace violation claims quickly and efficiently by allowing them to mutually agree to not enforce arbitration agreements in exchange for the PAGA claims being dropped from the case.

For these and other reasons, we are pleased to **SUPPORT** your **AB 385**.

Sincerely,



Ashley Hoffman  
Policy Advocate  
California Chamber of Commerce

American Property Casualty Insurance Association  
American Staffing Associations  
Brea Chamber of Commerce  
Building Owners and Managers Association

California Association for Health Services at Home  
California Association of Health Facilities  
California Bankers Association  
California Beer and Beverage Distributors  
California Business Properties Association  
California Builders Association  
California Business Roundtable  
California Farm Bureau  
California Food Producers  
California Hotel & Lodging Association  
California Manufacturers and Technology Association  
California New Car Dealers Association  
California Restaurant Association  
California Retailers Association  
California Staffing Professionals  
Carlsbad Chamber of Commerce  
Civil Justice Association of California  
Chino Valley Chamber of Commerce  
Commercial Real Estate Development Association, NAIOP  
Family Business Association of California  
Garden Grove Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Greater Riverside Chambers of Commerce  
International Council of Shopping Centers  
Long Beach Area Chamber of Commerce  
National Federation of Independent Business  
National Payroll Reporting Consortium  
North Orange County Chamber  
Oceanside Chamber of Commerce  
Official Police Garages of Los Angeles  
Orange County Business Council  
Pleasanton Chamber of Commerce  
Rancho Cordova Area Chamber of Commerce  
Redondo Beach Chamber of Commerce  
Sacramento Regional Builders Exchange  
San Gabriel Valley Economic Partnership  
South Bay Association of Chambers of Commerce  
Southwest California Legislative Council  
Torrance Area Chamber of Commerce  
Tulare Chamber of Commerce  
Western Growers Association

cc: Stuart Thompson, Office of the Governor  
Lauren Prichard, Assembly Republican Caucus

AH:ll