

THE PRIVATE ATTORNEYS GENERAL ACT (PAGA)



Retailers work hard to meet and exceed the requirements of all labor laws and regulations. However, PAGA (The Private Attorneys General Act) has turned California's myriad workplace laws into a minefield for employers, where allegations of even minor violations can result in substantial "shakedown" settlements that primarily benefit attorneys, not the wronged employee.



BACKGROUND

PAGA was enacted nearly 20 years ago as a means of increasing enforcement of California's Labor Code. Rather than bolstering the enforcement staff of entities like the Labor Commissioner or CalOSHA, the Legislature effectively deputized private attorneys to serve as public prosecutors.

Under PAGA, private attorneys may represent their client as well as all other similarly situated employees. Therefore, a single aggrieved employee may result in action representing hundreds or thousands of employees.

PAGA suits essentially are class-action lawsuits, but without the legal standards to which class-action suits are held. Furthermore, employers can be sued for civil penalties even if the employee(s) did not suffer any financial loss from lost or delayed wages - for example, a misspelling on a pay stub - and those penalties can be

stacked. PAGA's lack of standards means that even small employers are exposed to liability in the millions of dollars for minor violations.

The "sticker-shock" of PAGA lawsuits can make it difficult for employers to fight these suits and force them into settlements. Plaintiffs' attorneys have been known to issue "draft" PAGA complaints to compel employers to settle before the case is filed.

PAGA suits and settlements result in considerable fees for these attorneys, becoming a cottage industry of its own. According to Californians for Fair Pay and Employer Accountability:

- There are between 4,600 and 6,000 PAGA lawsuits filed each year
- Attorneys in PAGA cases walk away with an average of \$372,000 per case

Aggrieved employees, however, are striking out. According to a review of PAGA cases for CFPEA:

- Workers average about one-fifth the compensation in a PAGA case than those who filed a claim with the Labor and Workforce Development Agency (\$1,256 vs. \$5,941)
- Workers in PAGA cases also waited 50% longer to receive their compensation (526 days vs. 343 days)

IMPACT ON RETAIL

With such a significant share of the workforce, PAGA suits have cost retailers hundreds of millions, if not billions of dollars. And as time passes, PAGA-related challenges for retailers and other employers increase over time, as each year the Legislature adds new requirements to the Labor Code.

As history has shown, both employees and employers fair better under administrative processes than in courts. Retailers support alternatives to the PAGA system of enforcement. A measure proposed for the ballot, the proposed Fair Pay and Employer Accountability Act, would provide California workers and businesses with an alternative mechanism to resolve employment claims without civil lawsuits under PAGA.

