PAGA Claims Contribute to Employee Layoffs in California

Analysis of state PAGA and WARN filings indicate ordinary employees are PAGA's ultimate victims

California's Private Attorneys General Act (PAGA) deputizes ordinary employees to act as agents of the state labor department. The law allows employees to file employment violation claims against employers and share in the penalty or settlement income. In practice, PAGA has become a cash cow for trial lawyers, who file thousands of frivolous lawsuits each year and collect the vast majority of the proceeds. For instance, a $65 million PAGA settlement by Walmart in October 2018 generated $21 million for the lawyers and an average of just $108 for each affected employee.

PAGA claims are often for administrative or good-faith violations of California's 1,100-page labor code. For instance, employers who allow their employees to take flexible lunch hours expose themselves to PAGA lawsuits for violating California's labor law requiring set break times. Employers who give their employees holiday or performance-based bonuses could face PAGA claims if they don't factor these bonuses into employees' underlying base rate of pay on which overtime compensation is calculated. To ward off PAGA lawsuits, employers must eliminate shift flexibility and office perks.

A recent report published by the California Business and Industrial Alliance (CABIA) finds that employees fare far worse under PAGA than if the state Labor and Workforce Development Agency (LWDA) resolves their cases. It concludes California workers receive nearly twice as much when their case is handled by the LWDA than by the courts, yet employers pay penalties that are less than half as much. The research indicates the reason why workers and employers fare worse under a PAGA court claim is because lawyers take such a huge cut, with fees that represent one-third or more of workers' total recovery.

This new CABIA analysis provides anecdotal evidence of additional PAGA consequences for employees. It suggests that PAGA is also likely contributing to employee layoffs because PAGA-related expenses force employers to cut labor costs.

California's Employment Development Department (EDD) requires large employers doing business in the state to file Worker Adjustment and Retraining Notification (WARN) notices at least 60 days before mass layoffs or closures. CABIA analyzed these WARN notices and state PAGA filings between 2014 and February 2020. Cross-referencing these public datasets shows that more than 100 companies with operations in California filed a WARN notice within 18 months of being hit with a PAGA filing.

These results suggest that PAGA lawsuits can contribute to (and in some cases may cause) employee layoffs. (Only employers with 75 or more employees are subject to WARN notice rules, so this analysis overlooks the layoff and closure consequences of PAGA filings at small businesses. Therefore, these findings are likely a conservative estimate of PAGA's direct impacts on employment.)

In the table below, CABIA lists 10 examples of businesses operating in California that laid-off employees or closed locations soon after they faced a PAGA claim. The table lists the number of laid-off employees, the dates of the PAGA and WARN notices, and the number of days between them.

Affected companies run the gambit of industry, size, and profitability. Some are single-location, low-profitability businesses. These include Alpine Village, a Bavarian-themed restaurant and bar in Torrance that was forced to close and lay off 35 employees five months after a PAGA claim in 2019. Others are bigger companies with multiple locations. These include Sport Chalet, which closed several locations across the Southland in 2016, laying off a combined 330 employees, eight months after getting hit with a PAGA claim.

For some affected businesses, the PAGA claim was likely only a minor contributing factor in their California retrenchment plans. For other less-profitable businesses, the PAGA claim was likely a more significant (or perhaps main) reason for laying off employees or closing down. What all these businesses have in common is they were forced to lay off employees in California soon after getting hit with a PAGA lawsuit.

These findings suggest employees themselves sometimes pay the cost of PAGA claims with their jobs. Recognizing this enormous negative impact of PAGA on employees, California legislators should immediately reform this law to eliminate frivolous lawsuits and multi-million-dollar punishments for victimless violations of the state's complex labor law.

Selected Businesses Operating in California that Laid Off Employees Soon after a PAGA Claim

Employer Name	PAGA Submission Date	City	# Employees Affected	Layoff or Closure	WARN Notice Date	Days between PAGA and Warn
California Redwood Company	11/05/2014	Korbel	106	Closure	12/04/2014	29
AutoAlert	08/19/2019	Irvine	79	Closure	09/27/2019	39
Flexsteel Industries	02/21/2019	Riverside	87	Layoff	05/15/2019	83
Act-On Software	09/18/2017	Roseville	96	Closure	01/03/2018	107
Alpine Village	09/20/2019	Torrance	35	Closure	02/06/2020	139
Color Spot Nurseries	04/18/2018	Carson	52	Closure	09/19/2018	154
Zacky & Sons Poultry	03/14/2018	*Multiple Locations**	465	Closure	10/26/2018	226
Sport Chalet	08/05/2015	*Multiple Locations^*	330	Closure	04/15/2016	254
Ghost Management Group	12/21/2018	Irvine	97	Layoff	10/16/2019	299
Hurley International	12/20/2018	Costa Mesa	56	Layoff	01/16/2020	392

** Fresno and Stockton*
^ La Canada, Ontario, Palmdale, San Diego, and West Hills
Source: California Employment and Development Department; California Department of Industrial Relations; CABIA analysis