



## SB 1129 – DODD PAGA Reform

### Summary

SB 1129 makes two small changes to the Private Attorneys General Act (PAGA) as follows: 1) Fixes deficiencies in an existing provision of law that provides employers with a limited “right to cure” for some technical paystub violations; and 2) provides that for a violation in which employees do not suffer any actual economic or physical harm, the total aggregate penalty is no more than \$5,000.

not have personally suffered a violation of each provision.

An initial violation carries a \$100 penalty per employee per pay period, and every subsequent violation carries a \$200 penalty. Employees can also recover attorney fees. Many PAGA plaintiffs assert that they can recover a civil penalty for each of these violations, per employee.

### Background

Various provisions of the California Labor Code outline requirements that employers must meet with respect to employee wages, hours, and working conditions. When an employer does not pay wages as required by law (such as by not paying overtime), or violates labor law in other ways, the Labor Code Private Attorneys General Act (PAGA) authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violation either through an administrative proceeding with the state’s Labor and Workforce Development Agency (LWDA) or through private legal action in Superior Court. The Labor Code also specifies additional civil penalties that may be imposed on employers who violate Labor Code provisions. Such civil penalties are in addition to wages that may be recovered and are intended to act as a deterrent against violations.

PAGA is intended to deputize citizens as private attorneys general to enforce the labor code if the state government's resources to enforce the law are limited. When an employee brings a PAGA representative action, he or she does so "as the proxy or agent of the state's labor law enforcement agencies, not other employees. Plaintiffs are now filing complaints alleging a wide variety of labor code violations under PAGA even if they have not or could

The root of the problem is that PAGA requires no harm for a violation. A violation is a violation even if very minor or technical and there is no actual harm to workers. This problem manifests itself most often in cases involving minor and technical paystub violations where there was a technical error on the paystub but no allegation that workers were harmed or not paid properly as a result of the violation. As an example, a case against a construction company in San Diego alleged (1) that there was an extra space in the name of the employer (2) the street address was not listed on the paystub (although the paystub listed the city, state, and zip code and the street address was on the check itself), and (3) not all applicable wage rates were separately listed. There were no allegations that any wages owed were not paid to workers. Due to the potential PAGA liability (estimated at close to \$2 million), the company settled the case for \$600,000, plus had to pay their own significant legal fees in defending the lawsuit. This is not an infrequent outcome of PAGA claims made for technical errors, when no harm has come to the claimants.

Two recent California Court of Appeal decisions – *Lopez v. Friant and Associates*, and *Raines v. Coastal Pacific Food Distributors* – demonstrate (to the courts’ clear frustration) that PAGA requires no harm for a violation, and that PAGA penalties attach even



for very minor paystub violations where there are no allegations that workers were not paid properly.

### Existing Law

PAGA, enacted in 2004, is actually a series of statutes codified in Sections 2698 through 2699.6 of the California Labor Code that “authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations.” The employee suing under PAGA acts “as the proxy or agent” of California’s labor law enforcement agency, the Labor and Workforce Development Agency (LWDA), in policing Labor Code violations. In simpler terms, PAGA confers a private right of action to individuals to prosecute Labor Code violations. PAGA incentivizes this type of lawsuit by authorizing the aggrieved employee to keep 25 percent of any civil penalties collected, while 75 percent goes to the state (Cal. Lab. Code § 2699(f)). Before filing a PAGA action, the aggrieved employee must exhaust specific administrative requirements by filing a written notice “of the specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation,” both online with the LWDA and by certified mail to the employer (Cal. Lab. Code § 2699.3(a)(1)(A)).

### This Bill

**SB 1129 limits the amount of PAGA penalties where there is no harm.** Where there is a violation that does not result in physical or economic harm to the employee, the PAGA penalties are capped at \$5,000 for the violation. Therefore, the employer is still punished for the violation, but the livelihood of the business is not jeopardized over a minor or technical violation where workers are not harmed.

**SB 1129 also fixes the limited “right to cure” for paystub violations previously enacted by the legislature.** AB 1506 (Hernandez) of 2015 enacted a very limited right to cure for certain kinds of minor paystub violations.

This was an acknowledgement by the Legislature that there was a problem with abusive PAGA lawsuits for paystub claims, and an attempt to fix it. Unfortunately, while well-intended, limitations contained in that bill have made it ineffective.

This proposal would make several changes to strengthen the right to cure provisions of AB 1506 to make it a real and meaningful remedy against claims over very technical paystub violations. The Legislature has already agreed that there is a problem and tried to fix it. We just need to make sure that the “fix” actually works.

**SB 1129 would not overturn PAGA or in any way impact the ability of workers who have been the victim of wage theft to pursue penalties against their employer for those violations of the law. It would merely address some of the more troubling or abusive litigation aspects of PAGA in a narrow and targeted manner without harming workers who have truly been aggrieved.**

### Support

None on File

### Opposition

None on File

### Contact

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