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Regulatory Update

LWDA Issues Groundbreaking PAGA Regulations

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In a first, the California Labor and Workforce Development Agency (LWDA) issued [proposed rulemaking](#) on Feb. 6 concerning interpretation of the California Private Attorneys General Act (PAGA). The regulations come after significant legislative reforms were made to PAGA in 2024 and continue a trend curbing litigation abuses associated with the statute. If finalized in their current form, the regulations are likely to have a significant impact on (1) the content of LWDA exhaustion notices, (2) the manner and means of curing alleged violations and (3) the approval of PAGA settlements. Specifically as it relates to resolution of PAGA claims, the proposed regulations may limit employers from resolving overlapping and competing PAGA claims via one settling plaintiff — which will alter how many of these cases resolve. We discuss these impacts below.

Background

Enacted in 2004, PAGA authorizes “aggrieved employees” to act as private attorneys general by bringing suits in a representative capacity on behalf of other employees who have suffered Labor Code violations. The law allows employees to stand in the place of the State of California and recover civil penalties that previously had only been available for recovery by the state. Any penalties recovered are divided between the LWDA and the aggrieved employees, with 65% going to the LWDA and 35% to the employees.

In 2024, PAGA was amended in a number of key ways, including:

- Stricter standing requirements, limiting a PAGA representative only to pursue violations they personally suffered.
- Confirmation that the one-year statute of limitations period applicable to PAGA claims precludes employees from suing for violations that occurred outside of that period.
- Imposition of manageability requirements.
- A revised penalty structure, giving employers the opportunity to reduce maximum penalties.
- Creation of an early evaluation conference and new cure provisions to provide employers an opportunity to resolve claims at the outset.

For a fuller recap of the changes to the law, [see our prior client alert here](#).

Proposed Regulations

The LWDA issued its proposed rulemaking on Feb. 6, with the comment period scheduled to run through March 23. The LWDA has indicated that while no public hearing is currently scheduled, it will hold one if it receives a written request from any interested person. In their current form, the regulations appear to contemplate applying to existing cases once adopted. We will continue to monitor.

As to the specifics of the proposed regulations:

LWDA's Proposed Regulations Seek to Curb Abuses Associated With the Exhaustion Notice

Prior to initiating a lawsuit under PAGA, an aggrieved employee must first file notice with the LWDA describing the Labor Code violations and facts and theories supporting the claims. The purpose is intended to give the LWDA a "right of first prosecution," as well as to allow employers to decide how they wish to respond. However, the LWDA recognized that current filing practices do not meet the purpose or intent of the administrative notice requirements, including through the use of mass produced, boilerplate notices that do not consider the employee's unique circumstances. These filing practices, the LWDA states, "impede its role ... and frustrate the proper functioning of the administrative process." As a result, the LWDA seeks to combat this phenomenon by:

- Identifying *high-frequency filers* and *vexatious filers* and imposing additional requirements on them prior to filing any notice.
 - **High frequency filers** are defined as those attorneys or firms who have filed more than 200 PAGA notices during the preceding 12-month period. These filers must include a special cover letter with bold certification text identifying them as "high frequency filers" and must also obtain a signed certification from the claimant attesting to the accuracy of the violations alleged.
 - **Vexatious filers** are defined as those who the LWDA has found repeatedly filed noncompliant PAGA notices, including by failing to adequately allege the facts and theories supporting the violations. Such filers will be subject to prefiling screening orders. In other words, the LWDA will first determine whether their PAGA notice complies with the statute before they are allowed to file it.
 - The LWDA will maintain a public list of designated high-frequency and vexatious filers on the online portal.
- Standardizing the format and content of PAGA notices, which, as proposed, will need to include, among other things:
 - Claimant and employer names, employment dates, workplace location, position title and a short description of the claimant's job duties.
 - The specific Labor Code sections allegedly violated.
 - A short and plain statement of facts and theories supporting each violation personally suffered by the claimant. Conclusory statements, generalized or vague allegations of violations without facts specific to the claimant's unique circumstances, or statements merely summarizing or restating the law are not sufficient.
 - For each of the violations alleged, the specific Labor Code sections providing the civil penalties the claimant seeks to recover.

LWDA's Proposed Regulations Outline How Employers Can Avail Themselves of PAGA's Cure Provisions for Smaller Employers

One of the more significant aspects of the 2024 amendments was the addition of a cure mechanism for employers with fewer than 100 employees. Many questions were left unanswered, however, as to who exactly could avail themselves of this opportunity, and how to do so. The regulations propose to fill in the gaps, including by:

- Making clear that the 100-employee count includes all employees (exempt and nonexempt, permanent and temporary) at any location within the preceding year period.
- Explaining the process for curing, including outlining what must be included in the employer's cure statement, what happens if the LWDA determines a hearing is necessary to evaluate the proposed cure, how employees may challenge cure plans and the timing within which employers must complete all cure actions.
- Protecting cure communications under Evidence Code Section 1152.

LWDA's Proposed Regulations Seek Greater Oversight Over PAGA Settlements

PAGA requires the representative plaintiff to submit to the LWDA various court-related filings to facilitate the LWDA's review and oversight of such actions. However, the LWDA states that in many cases parties either do not submit required documents or provide information that is often insufficient for the LWDA to properly assess whether the proposed settlement is fair. The proposed regulations thus seek to impose additional reporting obligations on employees. Two settlement-related issues that are likely to have profound impacts as to how PAGA cases are resolved are:

- The proposed regulations purport to prohibit claimants from amending a PAGA notice to add violations not previously alleged "as part of, or at any time after the claimant has reached a proposed settlement agreement with the employer in a pending civil action." The LWDA states that this is aimed at preventing employers from extinguishing claims against them that were not investigated, litigated or pursued in the case before being settled.
- When seeking court approval of a PAGA settlement, the regulations now purport to require the PAGA plaintiff to provide notice to all other employees who have filed LWDA notices against the same employer alerting them to the proposed settlement and the date of any approval hearing, and to provide a summary listing all PAGA claims encompassed within the settlement. Those employees will then have the opportunity to submit comments to the LWDA in its consideration of whether to object to the settlement. (Relatedly, the LWDA will require at least 45 days to review any settlement before any approval hearing.)

Together, these regulations would add new procedural hurdles to settling PAGA cases. Employers could be forced to negotiate agreements with multiple employees to resolve overlapping claims, and employees may be forced to contend with objections from other employees who do not wish to see their claims extinguished.

Next Steps

We will continue to monitor for developments and assess any changes made to the proposed regulations during the notice period.

In the meantime, we invite our clients to [attend an upcoming webinar we will be hosting](#), featuring the deputy secretary for enforcement of the LWDA, to discuss the impact of these regulations and other post-amendment developments.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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