

Publications

PAGA Reform Appears Likely By June 27

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Since its enactment in 2004, employers have wrestled with the California Private Attorneys General Act (PAGA). This year, a coalition of business groups proposed an initiated state statute to repeal PAGA and replace it with a much more employer-friendly "Fair Pay and Employer Accountability Act." California voters would have the opportunity to vote on the initiative in November 2024. However, to stave off an expensive ballot campaign, Governor Gavin Newsom has been negotiating with the coalition on ways to reform PAGA short of the wholesale repeal.

On June 18, the Governor Newsom announced that they've reached an agreement on PAGA reform. According to the governor, "this proposal maintains strong protections for workers, provides incentives for businesses to comply with labor laws and reduces litigation." If the new proposed legislation is enacted, the coalition will withdraw their repeal initiative. The legislation has not yet been drafted, but the governor stated the reform proposal would do a number of things, including those listed below.

Reforming the PAGA Penalty Structure:

- Encouraging compliance with labor laws by capping penalties on employers who quickly take steps to fix policies and practices, and make workers whole, after receiving a PAGA notice, as well as on employers that act responsibly to take steps proactively to comply with the labor code before even receiving a PAGA notice.
- Creating new, higher penalties for employers who act maliciously, fraudulently or oppressively in violating labor laws.
- Ensuring that more of the penalty money goes to employees by increasing the amount allocated to employees from 25% to 35%.

Reducing and Streamlining Litigation:

- Expanding which Labor Code sections can be cured to reduce the need for litigation and make employees whole quickly.

- Protecting small employers by providing a more robust right to cure process through the Labor and Workforce Development Agency to reduce litigation and costs.
- Codifying that a court may limit the scope of claims presented at trial to ensure cases can be managed effectively.

Improving Measures for Injunctive Relief and Standing:

- Allowing courts to provide injunctive relief to compel businesses to implement changes in the workplace to remedy labor law violations.
- Requiring the employee to personally experience the alleged violations brought in a claim.

To meet legislative deadlines, the legislation must be printed by June 24 and the Legislature must approve it by June 27. While the governor's announcement heralds a positive development for California employers, we caution that we do not yet know what the legislation actually says. We will report on any developments. Contact your Vorys lawyer, if you have questions about the pending legislation or current California PAGA compliance.