



PAGA REFORM AND AUDITS

WHAT IS PAGA?

California's **Private Attorneys General Act (PAGA)** allows employees to file lawsuits on behalf of themselves, other employees, and the State for Labor Code violations. Since its enactment in 2004, PAGA claims have posed a unique and serious threat to employers in California – often appearing alongside class action claims and bypassing arbitration. The **penalties can be staggering**, as they apply **per pay period, per employee** – making businesses easy targets for costly litigation.

What's New?

Thanks to the PAGA Reform of 2024, **employers now have more opportunities to defend against PAGA claims—if they take “all reasonable steps” to comply with the Labor Code.** While this reform includes a penalty reduction scheme for employers who take reasonable steps to comply before and after being notified of an alleged PAGA violation, the term “reasonable steps” isn't defined.

That said, all reasonable steps may include payroll audits and corrective actions based on findings; clear, written policies that align with labor laws; supervisor training on Labor Code and wage order compliance; other corrective action as to supervisors; and swift responses to alleged violations.

When evaluating whether an employer's efforts are reasonable, the law considers factors like company size, available resources, and the nature, severity, and duration of the alleged violations.

How Can Employers Respond?

The best way to minimize risk? Be proactive. Fisher Phillips can help you take all reasonable steps to ensure compliance and reduce potential penalties. We can work with you to:

- **Assess and monitor** compliance with customized strategies.
- **Conduct audits** to systematically review payroll processes, employee classifications, and workplace policies to help ensure compliance and, if necessary, correct potential violations.
- **Develop, review, and update** wage and hour policies and employee classification schemes. We can also supply you with template policies and procedures.
- **Train employees and managers** on compliance requirements, emphasizing the importance of accurate timekeeping and adherence to labor laws. We can also provide template policies and procedures for your use.
- **Promote awareness of compliance policies and procedures** throughout your organization.
- **Ensure accurate recordkeeping** for payroll and time tracking.
- **Respond quickly** to PAGA Notices (some violations must be cured within 33 days).
- **Create a compliance framework** to ensure the plan is consistently executed according to a regular, predefined schedule and includes clear documentation for all activities.

It's important to take every possible measure to counter the growing argument from plaintiffs that businesses not taking 'all reasonable steps' should receive the maximum penalties.

WHY FISHER PHILLIPS?

Fisher Phillips was the only law firm directly involved in the PAGA Reform Legislation negotiations, during which we advised the California Chamber of Commerce and various business groups. Our attorneys helped shape the legislation, providing practical advice on its language and impact on PAGA cases. We use this first-hand knowledge to benefit our clients.

We offer practical, cost-effective solutions, including flat-fee and hourly-based options to help you take the necessary steps.

■ KEY CONTACTS



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With hundreds of attorneys across the globe, Fisher Phillips advises and advocates for employers internationally on some of the most complex and high-profile workplace matters.

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EXAMPLE WAGE AND HOUR AUDIT TOPICS

TOPIC	EXAMPLE QUESTION
The Establishment of a Workday, Workweek and Pay Period	Does the company have an established 24-hour workday set forth in written policy for the entire workforce or established sub-groups? To the extent there are multiple workdays, has such been analyzed to ensure that it is not subterfuge for overtime?
General Policies and Procedures	Does the company utilize the most updated version of the California Wage Theft Protection Act Notice found at https://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf
Timekeeping Policies	Does the timekeeping policy identify how time is tracked and how time records are maintained?
Meal Period Policy	Does the meal period policy identify the proper time that an employee must take the first meal period (i.e. no later than the conclusion of the fifth hour of the shift taking into consideration any applicable waiver)?
Rest Period Policy	Does the rest period policy state the proper time periods (i.e. "every four hours or every major fraction thereof")?
Recovery Period Policy	Does the recovery period policy properly identify the temperatures at which point recovery periods shall be provided?
Minimum Wage Requirements/Regular Rate Calculation	Is minimum wage being paid for all hours-worked?
Overtime Requirements	Does the company's timekeeping and payroll system calculate overtime in accordance with California law (e.g. time worked more than 8 hours in day, 40 in a week, or the first eight hours on the seventh day of the workweek if the employee has worked all seven days in the workweek)?
Bonus and Supplemental Compensation Calculation	Does the company's timekeeping and payroll system properly conduct the requisite separate calculations for flat-sum and variable bonuses/supplemental compensation for the purposes of regular rate and overtime analyzes?
White-Collar Exemptions	To the extent an employee is classified as salaried exempt, does the employee receive a base weekly salary (separate from any commissions) of at least twice the state minimum wage for 40 hours worked?
Inside Sales Exemption Requirements	To the extent an employee is classified as inside sales exempt from overtime, does the employee satisfy on a pay period basis (unless a monthly analysis is permitted under California law) the inside sales exemption duties of making total earnings in the pay period of greater than one and a half times the minimum wage for all hours worked and more than half of compensation coming from commissions?
Outside Sales Exemption Requirements	To the extent an employee is classified as outside sales exempt from overtime, has it been confirmed that the employee spends more than half of the employee's time away from both a company office and any home office maintained by the employee, engaged in the sale of products and services? If the employee does not spend that amount of time away from such offices, what analysis has been conducted to ensure that the employee is still properly classified?

Commercial Truck Driver Exemption	Do truck drivers drive trucks of the required minimum weight and specifications to qualify for an exemption from overtime law?
Reporting Time Pay Requirements	Does the company have a policy for reporting time pay?
Off the Clock Analysis	Does the company ensure that any bag or security check entering the facility is conducted after the employee is clocked in?
Vacation/PTO	Does the vacation/PTO prohibit any "use it or lose it" policy?
Paid Sick Leave	Does the paid sick leave policy contain all required language under California, local and county law?
Itemized Wage Statement	Does the itemized wage statement contain: 1) gross wages earned; 2) Total hours worked (not required for salaried exempt employees); 3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis; 4) All deductions (all deductions made on written orders of the employee may be aggregated and shown as one item); 5) Net wages earned; 6) The inclusive dates of the period for which the employee is paid; 7) The name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; 8) The name and address of the legal entity that is the employer; and 9) All applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.
Alternative Workweek Schedule ("AWS") (If Applicable)	Does the company have all documentation (e.g., notice, memorandum, and election related documents) associated with the AWS election?
Piece-Rate Employees (If Applicable)	Is there a proper written agreement outlining how piece rate employees are paid?
Expense Reimbursements	Are individuals who are required to use personal cell phones being reimbursed for cell phone usage? Attention should be given to those who exchange work related texts with anyone in a supervisory or managerial capacity.
Final Pay	Is final pay provided to employees on the day of termination or when 72 hours or more of notice of resignation is given? In the alternative, is final pay provided within 72 hours when less than 72 hours' notice is given? Note that payment must be made available, not mailed/fed-exed to an employee by these deadlines.
Independent Contractor	Is any individual classified as an independent contractor properly classified under the applicable legal test?
Miscellaneous	Has the company been a defendant in any Labor Board complaint before the Division of Labor Standards Enforcement in the past five years? Has there been any Order Decision and Award issued and if so, was it adverse?

EXAMPLE AUDIT REPORT SECTIONS:

Process

The Firm's audit involved a comprehensive review of the Company's wage-hour practices. The audit included a review of more than 100 compliance topics that involved analysis of the Company's employee handbook, stand-alone policies and procedures, sampling of time and payroll records and litigation history. The audit also included interviews of [INSERT INDIVIDUAL(S)] on [INSERT DATE] to get a sufficient understanding of the Company's wage-hour practices.

Employee Handbook

The Company provided the Firm with the following employment handbooks, policies and/or procedure documents: [INSERT DOCUMENTS]. The employment handbook was mostly compliant but requires the following revisions and/or considerations:

1. [INSERT ISSUE]
2. [INSERT ISSUE]
3. [INSERT ISSUE]

General Payroll Administration Issues

California law places various foundational wage hour legal obligations on companies. These obligations include, but are not limited to, the establishment of a workday and workweek, the distribution of a Wage Theft Protection Act Notice, etc.

Best practices also include consideration of a pre-dispute arbitration agreement, training on company wage hour policies, wage deduction authorization documents, and a structured expense reimbursement process. The audit found as follows:

1. [INSERT ISSUE]
2. [INSERT ISSUE]
3. [INSERT ISSUE]

Recommendations

The following action items are recommended based upon the Firm's findings in its audit of the Company's practices:

1. [INSERT RECOMMENDATION]
2. [INSERT RECOMMENDATION]
3. [INSERT RECOMMENDATION]

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