

# PAGA PAINS SOON MIGHT NOT JUST BE FOR CALIFORNIA EMPLOYERS

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Employers operating in California have likely heard of the infamous Private Attorneys General Act (PAGA) statute that has been impacting employers for the past 17 years. The law – sometimes called “the Bounty Hunter” statute – allows employees to sue their own employers for violations of the California Labor Code on behalf of the State of California, permitting them to seek cumulative penalties for violations of the Labor Code and letting them keep a percentage of the penalties as a reward, with the state keeping the balance. In addition, they are reimbursed for their attorneys’ fees and costs. But even if your company isn’t operating in California, the phrase “PAGA” should make you think twice. The multi-million-dollar revenue earner for the State of California has grabbed the attention of many other states throughout the country, and it’s possible your own state may soon enact a similar law. With that said, what should you know?

## What is PAGA?

Some might call PAGA the bane of California employers’ existence. To avoid expensive litigation, most employers are forced to settle PAGA allegations well before trial, creating a lucrative incentive for enterprising plaintiffs’ attorneys to file as many claims as possible. But even small violations can give rise to million-dollar settlements. Others nonetheless may see PAGA as a revenue generator for the State of California, as its strong-arm enforcement mechanism has encouraged employers to comply with the onerous California Labor Code. To their point, PAGA earned California \$88 million dollars in 2019 alone.

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At its core, PAGA is a statute that creates a private right for an employee to sue their employer in a representative capacity for purported violations of the California Labor Code. Intended to provide private citizens the ability to enforce the Labor Code on behalf of the state and to punish employers for not complying, PAGA permits the employee to litigate on behalf of the State of California and other allegedly aggrieved employees seeking civil penalties for each employee for each week when a violation occurs. For this reason, although a court ruled that a California PAGA action alone cannot recover unpaid wages, PAGA does offer the remedy of civil penalties – and attorneys’ fees can be awarded, too. Indeed, the attorneys’ fee provision is what has driven the litigation frenzy, although 75% of any judgment/settlement goes to the State of California, and the remaining 25% goes to the aggrieved employees.

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### **Which States Have Taken Notice?**

Other states have taken notice of the success of California's PAGA statute. PAGA-like laws could soon be crashing against the shores of your state. Already, **Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, Oregon, Vermont** and **Washington** have considered such legislation.

Largely, the proposed laws in these states mirror California's PAGA. However, some states are trying to further expand what California has already done. In addition to carving out civil liability for wage and hour (Labor Code) violations, states such as Maine, Vermont, and Washington have also considered liability for violations based on discrimination, protected leave, and workplace safety laws. Increasing exposure even more, Massachusetts and Washington have also considered permitting the recovery of the employees' wages if successful – which could circumvent class certification requirements in class actions.

So far, no other state has successfully passed a PAGA-like law. On June 18, 2021, the Maine legislature passed such a bill, but the governor stepped in and subsequently vetoed it. New York, Oregon, New Jersey, and Connecticut's proposed laws have not yet been voted on. Washington's bill – although initially unsuccessful presumably because it also allowed for the recovery of traditional wages in addition to civil penalties – is not expected to be reignited on a narrower basis. Overall, the idea is still gaining steam in the legislatures of many states.

## What Should We Do?

What does this mean for employers in those states? Luckily, California employers have served as a guinea pig, and much can be learned from the past several years. It is important to understand the risks involved if PAGA comes to your state and to plan ahead, as even minor infractions can result in significant liability.

Fisher Phillips and its team of employment lawyers are here to help you navigate through the cloudy weather ahead. We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney or the author of this Insight.