

CALIFORNIA EXTENDS PAGA EXEMPTION FOR UNIONIZED CONSTRUCTION INDUSTRY EMPLOYERS – BUT YOU NEED TO TAKE ACTION TO QUALIFY

Insights
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California Governor Newsom just signed legislation Saturday that will ensure certain unionized construction employers are completely exempted from PAGA lawsuits for the next 14 years. Thanks to AB 1034, construction employers that meet certain standards – including paying workers 30% more than minimum wage – will see the Private Attorneys General Act (PAGA) exemption they have enjoyed for past decade pushed out to January 1, 2038. What do employers need to know about this positive development and what steps do you need to take to enjoy the relief?

Quick Background

Under existing law enacted back in 2018, PAGA does not apply to employees in the construction industry if they are covered under a collective bargaining agreement that meets certain conditions (including wages at least 30% more than the state minimum wage) and does all of the following:

- Prohibits all violations of the Labor Code that would be redressable under PAGA and provides for a grievance and binding arbitration procedure to redress those violations.
- Expressly waives the requirements of PAGA under clear and unambiguous terms.
- Authorizes the arbitrator to award any and all remedies otherwise available under the Labor Code.

Exemption Gets an Extension

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However, the exemption contained a “sunset date,” meaning it was temporary in nature and would expire unless the legislature acted to extend it. The law provided that it only applied to collective bargaining agreements in effect before **January 1, 2025** and expired on the date the collective bargaining agreement expires or on **January 1, 2028**, whichever was earlier.

AB 1034, just signed by Governor Newsom, extends this important exemption for certain unionized employers in the construction industry until **January 1, 2038**. This means construction employers that have a collective bargaining agreement that meets the above conditions can continue to enjoy the PAGA exemption for many years to come.

Proponents of AB 1034 argued that it was needed for the following reasons:

Without this exception, contractors signatory to a CBA face double jeopardy as they are unfairly subjected to the procedures and penalties outlined in both their CBA and PAGA when dealing with an aggrieved employee. These overlapping penalties diminish the value of the CBA and place union contractors at a specific disadvantage in the marketplace.

The PAGA CBA waiver authority has proven beneficial for both labor and management, as industry CBAs provide mutually agreed upon and more efficient processes for resolving worker grievances. Safeguarding the efficiency achieved through collective bargaining is essential for growth within the signatory construction industry.

Next Steps – What Should You Do?

This is yet another piece of good news California employers can enjoy after seeing [landmark reforms](#) enacted earlier this summer. But construction industry employers need to make sure they take proactive steps to make sure they are covered under this exemption.

If you have collective bargaining agreements covering your workers and wish to continue to receive the benefit of the PAGA exemption under existing law, you should review your contracts to make sure that they satisfy the conditions noted above. Remember, the exemption is not automatic and does not necessarily exempt a construction employer just because you are unionized. Your contract must meet certain

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specific conditions and you must obtain an express PAGA waiver from the labor organization that is included in the collective bargaining agreement.

Conclusion

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