



PAGA Reform for Real? Three Different Versions of PAGA Reform Initiative Filed with California Attorney General

Insights

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Over the last several years, the level of employer complaints about PAGA has reached a deafening crescendo. For some time now, employers have expressed deep concern about abusive litigation tactics and “extortionate” PAGA claims over very minor violations. Unfortunately, these concerns have largely fallen on deaf ears in Sacramento, with only incremental changes to the law.

However, on October 5, three different versions of PAGA reform initiatives were filed with the Attorney General’s office to begin the process to bring one or more of these proposals to the ballot.

It remains to be seen how far these initiative proposals advance, and whether they qualify for the ballot. But this represents a definite escalation in the fight over PAGA. Perhaps the threat of an initiative is the only thing that will convince the Legislature to make meaningful reform? Only time will tell, but this should be interesting to watch!

Baby Steps

PAGA has been a source of controversy ever since it was first enacted (as one of the last bills signed by Governor Gray Davis before his historic recall in 2003). Republican pressure during the annual budget negotiations led to some modest procedural reforms that were enacted a year later.

In recent years, business groups and individuals reported to the Legislature that PAGA was being abused to pressure employers to pay large settlements over relatively minor claims – in a litigation environment often referred to as “the Wild, Wild West.” Kudos to former-Assemblywoman Shannon Grove (R-Bakersfield) who, for several years running, was virtually a one-woman band in the Legislature calling for PAGA reform. In fact, in 2016 alone, she introduced not one, not two...but **five** separate bills to reform PAGA. Needless to say, none of these bills advanced past the first policy committee.

The Legislature has made a few incremental changes of late. In 2015, Governor Brown signed AB 1506, which provided employers with an opportunity to cure Labor Code 226 claims for inaccurate wage statements that involved the employer’s name and address or the inclusive dates of the pay period. In 2016, as part of his proposed budget, Governor Brown proposed a number of policy changes to PAGA. However, after concerns were raised by labor and plaintiffs’ attorneys, these proposals were watered down to make relatively minor and procedural changes to PAGA.

But more meaningful PAGA reform has remained elusive. For example, five PAGA-related bills were introduced in 2017, but none of the bills even had a hearing in their first policy committee.

Three Versions of PAGA-Reform Initiatives Filed

On October 5, three different proposed initiatives were filed with the Attorney General's office. The initiatives were submitted by Sean McNally, the President of KBA Engineering in Bakersfield, and a member of the California Commission on Health and Safety and Workers Compensation (CHSWC). The initiatives are each entitled the "Worker Protection and Lawsuit Accountability Act."

PAGA Initiative Version 1

The first initiative proposal is the most ambitious of the three. Among other things, this proposed initiative would:

- Repeal PAGA in its entirety.
- Provide that the Labor Commissioner has sole authority to issue citations for civil penalties (other than where a civil penalty is specifically provided by statute).
- Provide that all civil penalties shall be distributed 50 percent to the employee(s) and 50 percent to the Labor and Workforce Development Agency.
- Provide that an employer is not subject to penalties where they were acting in good faith reliance on an administrative regulation, order, ruling, approval, or interpretation of the Labor Commissioner.

PAGA Initiative Version 2

The second proposed initiative, among other things, would do the following:

- Prohibit a plaintiff's attorney from contracting for or collecting a contingency fee on PAGA cases.
- Provide that a plaintiff's attorney shall only be compensated on an hourly basis at a rate not to exceed 150 percent of the rate charged by the Attorney General.
- Provide that plaintiff's attorney's hours billed shall be subject to review and approval by the court.
- Provide that a PAGA action may only be brought by an employee who has personally suffered an actual injury under each and every action contained in the complaint.
- Specify that discovery rights in PAGA cases shall be limited to information regarding employees in the same job classification at the same geographic location as the representative.
- Require all complaints for violation of labor laws be submitted under penalty of perjury.
- Provide that in any year in which an attorney files a PAGA lawsuit, the attorney shall complete an additional eight hours of legal ethics training.

PAGA Initiative Version 3

The final proposed PAGA reform initiative is similar to the second proposal, with the following changes:

- PAGA penalties shall only be awarded for a “willful” violation of the law.
- Plaintiff’s attorney contingency fees for PAGA cases will be limited to 25 percent for the first \$100,000 awarded, and 12.5 percent for amounts awarded over \$100,000.

What’s Next?

We’re still a very long way from these proposed initiatives qualifying for a future election. This is merely the first step in a very long process. And it would likely take somewhere in the neighborhood of \$80 million to run an initiative campaign with any chance of success. It remains to be seen whether any big donors are willing to step up and contribute big bucks to a PAGA reform initiative.

But this is a serious development. Labor and plaintiffs’ attorneys have most assuredly noticed. Perhaps the threat of ballot-driven initiative reform will convince labor and the attorneys to finally come to the table and engage in meaningful legislative reform to PAGA. California employers would certainly welcome that development.

Stay tuned here for further updates.

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