



SB 750 – PAGA Explained

1. A plaintiff under PAGA can seek penalties not only for the Labor Code violation that affected him or her, but also for different violations that affected other employees. The California Court of Appeals recently affirmed this position in May 2018, holding that “PAGA allows an ‘aggrieved employee’ —a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” This means that an employee who worked for a single day and suffered a single meal period violation can sue under PAGA and represent all other employees in California for any and all other potential violations.
2. Despite being virtually identical to class action cases, PAGA claims are generally not subject to the same requirements of class certification. Courts do not make plaintiffs prove that they can proceed on a representative basis -- essentially, a plaintiff can file a PAGA case and then claim they can go straight to trial. This is one less hurdle that plaintiffs need to overcome. There are cases holding that PAGA claims must still be “manageable,” but more and more cases are taking a contrary position and refusing to find PAGA claims to be unmanageable, even where they are virtually the same as a class action case.
3. A recent case by the California Supreme Court, *Williams v. Superior Court*, is consistently used by plaintiffs to claim that they can get documents and information for all employees based on the mere allegations of the single named plaintiff. While employers typically fight these requests, courts continue to view and use *Williams* to give plaintiffs most of the requests.
4. PAGA penalties can be stacked on top of other penalties provided by the Labor Code. For example, if an employee can recover a \$100 penalty for a wage statement violation, the employee can then ask for another \$200 penalty on top of that under PAGA. This results in outrageous and excessive demands of penalties by plaintiffs -- there’s a recent case underway in Northern California where the plaintiffs demanded \$77 million in PAGA penalties for meal period issues.
5. The case law is unsettled as to whether PAGA penalties can be stacked together for multiple violations. In other words, plaintiffs typically claim that they should be entitled to a \$200 PAGA penalty for each violation, not just each pay period. So, if an employee worked off-the-clock and also suffered a meal period violation and also had a wage statement issue, they would claim these are three separate violations and that they should get \$600 in penalties per pay period (\$200 x 3). This is yet another way that PAGA penalties can explode to outrageous exposures.
6. Courts have the discretion to reduce the PAGA penalties, but more and more case law is recently holding that this “discretion” does not allow a court to award zero. They must still award something for penalties.
7. Because PAGA is a “representative” action on behalf of the State of California and the “real party in interest” is the State of California, these claims are not subject to arbitration agreements signed

between the employee/plaintiff and the employer. Plaintiffs, therefore, bring PAGA claims to circumvent arbitration agreements

8. Courts do not allow PAGA penalties to be included as part of calculating the “amount in controversy” when defendants try to remove a case from state court to federal court under the Class Action Fairness Act or any other basis. So, if a plaintiff brings a PAGA-only case, even if the penalties sought exceed \$5 million (which they usually do), these penalties cannot form the basis for removal and the case is stuck in state court.
9. While juries are likely to view PAGA penalties are unnecessarily excessive and unwarranted, and thus more likely to decline to award PAGA penalties, PAGA claims are subject to a bench trial, not a jury trial. So, defendants cannot avail themselves of the benefits of a jury trial for PAGA claims. They are stuck with a trial with the judge, who will often agree that penalties are excessive but claim that his/her “hands are tied and must follow the law” to award penalties.
10. PAGA is used to create outrageous potential exposure for employers and then use that leverage to extort higher settlements. Then, if an employer settles the case -- due, in part, to high potential exposure from PAGA penalties -- plaintiffs typically allocate merely 1% of the settlement to PAGA penalties. It’s become a pure extortion tactic.

For more information, contact Fawn Barrie, ORLRC: 503-580-5487