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Private Attorneys General Act

## State Law Has Employers on the Defensive

**T**HE WAY courts have interpreted a California law – the Private Attorneys General Act (PAGA), which has been on the books for 18 years – has led to an explosion of lawsuits against employers during the last few years.

The law has generated more than 20,000 lawsuits since 2017 at an average cost of \$1.1 million per case, according to one study.

PAGA permits employees to sue for civil penalties on behalf of themselves, fellow workers and the state for alleged labor code violations. If a suit is successful, the state receives 75% of the damages with the employee receiving the balance.

As a result, California employers face increasing litigation uncertainty that traditional insurance may do little to mitigate.

The employee in essence acts as the state's watchdog; he or she need not suffer any actual harm from an alleged violation in order to file a lawsuit. One employee has the ability to file a suit alleging multiple labor code violations.

The result? An average of 15 PAGA notice letters arrive at the California Labor and Workforce Development Agency daily.

### How did we get here?

The law was enacted in 2004 to improve California Labor Code enforcement by empowering employees to pursue violations when the state has insufficient resources to pursue them.

The growth in litigation started after a California Supreme Court decision in 2009, holding that PAGA suits did not have to meet the certification requirements that apply to class-action lawsuits.

Litigation activity jumped significantly again in 2014 after the state Supreme Court held that employees could not waive their rights to file PAGA claims when they reach arbitration agreements in disputes with their employers.

Three years later, the court ruled that employees were generally entitled to request and receive large amounts of information from employers early in the litigation.

The high cost of providing the information gives employers an incentive to settle claims quickly.

Finally, an appellate court ruling in 2018 gave employees the right to sue over alleged violations that do not directly affect them, so long as at least one violation does.

### What's being claimed?

#### Typical PAGA Claims

- Claims for unpaid off-the-clock work during meal periods,
- Claims for misclassifying employees as independent contractors, and
- Claims for rounding employee time entries.

PAGA claims can also involve allegations of discrimination, retaliation and failure to protect the health and safety of employees. There are even COVID-19-related claims.

One allegation triggers multiple other ones related to the first, such as failure to pay all earned wages, failure to pay wages in a timely manner, and so on.

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