



Hot topics in California Employment and Labor

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Hot topics in California employment and labor

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prevention

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Workplace Violence Prevention Act

- Went into effect July 1, 2024
- Applies to all covered employers
- Sample Model Programs
- Cal/OSHA proposed regulations
 - Further limiting “small, private worksite” exception
 - Clarifications/examples of controls and practices to reduce workplace hazards
 - Require employers to keep record of all concerns, including anonymous reports
 - Keep identities of reporting employees confidential unless the employee expressly allows their identity to be shared
 - Guidance on type of hazards to consider during inspections, taking corrective action, and responding to and investigating workplace violence incidents

Indoor heat illness prevention

- Went into effect July 23, 2024
- Excluded: remote workers, emergency operations, incidental heat exposure (i.e. less than 15 minutes in a 60 minute period), vehicles
- Must keep indoor areas below 82 degrees
- Below 87 degrees (if workers are required to wear clothing that restricts heat removal or are in a high radiant heat area)
- Must provide adequate access to water
- Must have a written, compliant heat illness prevention plan that is customized to the employer's operations (sample model programs available on DIR website)

Workplace violence restraining order (SB 428)

- Effective January 1, 2024
- Current law (Code of Civil Procedure section 527.8): employers can seek a temporary restraining order (TRO) against an employee who has acted violently in the workplace or made threats of violence against coworkers
- New law: expands protections to allow an employer to obtain a TRO on behalf of an employee for harassment
- Employer must provide the employee the opportunity to decline to be named in the order before filing the petition
- Limitations: the court can't issue a TRO if it would prohibit protected speech

Employer notification of worker rights (AB 1870)

- Goes into effect January 1, 2025
- Existing requirement to keep posted a notice of information regarding workers' compensation
- New requirement to Labor Code section 3550 to also include information that “[t]he injured employee may consult a licensed attorney to advise them of their rights under workers’ compensation laws. In some instances, attorney’s fees may be paid from an injured employee’s recovery.”

Reporting work related injuries

- Injury Log – Cal/OSHA Form 300 (within 7 calendar days)
- Incident Report – Cal/OSHA Form 301 (within 7 calendar days)
- Form 5020 – Employer’s Report of Occupational Injury or Illness (within 5 days of obtaining knowledge of the injury)
- Year-End Summary – Cal/OSHA Form 300A (By March 2)

What is PAGA?

- The Private Attorneys General Act (“PAGA”) allows aggrieved employees to step into the shoes of the Attorney General and seek civil monetary penalties on behalf of themselves and all other similarly aggrieved employees, in addition to the underlying damages for several labor code violations

PAGA claims are expensive - need for PAGA reform

- PAGA claims are complex, involve many employees and can take a long time to resolve
- PAGA is also immune from arbitration agreements and class certification requirements
- The Labor and Workforce Development Agency (LWDA) receives 75% of the penalties collected from Private Attorneys General Act (PAGA) claims, while the remaining 25% is distributed to the affected employees

Details	
Total PAGA Court case awards	Nearly \$10 Billion since 2013
Average PAGA case length	2 years
Average PAGA settlement for workers	\$1,300 in court, \$5,700 in state enforcement
PAGA penalties	\$100 per employee per pay period for first violation, \$200 per pay period per employee for subsequent violations
PAGA funds	Used for labor law outreach, public enforcement, and education

Need for PAGA reform

- Court decisions have expanded the reach of PAGA lawsuits:
 - Employees can file PAGA lawsuits for not only themselves, but also all other aggrieved employees
 - Employees can bring PAGA lawsuits violations for which they did not suffer
 - Employees can bring PAGA lawsuits based on claims which are time barred
 - Employees can bring PAGA lawsuits based on claims which they settled

PAGA reform

- Significant changes were made to PAGA effective July 1, 2024, starting with a reform package spearheaded by the CalChamber and signed by Governor Gavin Newsom in July
- Two recent California Supreme Court decisions provide further relief for employers

Core PAGA reform

- **Employee Share of Penalty**

- Increases share of employee's recover from any penalty from 25 percent to 35 percent

- **Standing**

- Required the employee to personally experience the alleged violations brought in a claim
- Alleged violations must have occurred within the last year

Core PAGA reform

- **Penalty Caps for Proactive Compliance**

- Employers who proactively take steps to comply with the Labor Code before receiving a notice, the maximum penalty that can be awarded is 15% of the applicable penalty amount
- For employers who take steps to fix policies and practices after receiving a PAGA notice, the maximum penalty that can be awarded is 30% of the applicable penalty amount
- The maximum penalty where the alleged violation was brief or where it is a wage statement violation that did not cause confusion or economic harm to the employee, the maximum penalty is reduced
- Penalties are calculated based on pay periods. Companies that pay weekly are no longer penalized

- A new penalty (\$200 per pay period) if the employer acted maliciously, fraudulently or oppressively

Core PAGA reform

- **Employee Right to Cure**

- Expands which Labor Code sections can be cured, so employees are made whole quickly
- Protects small employer by providing a more robust right to cure process through the state labor department to reduce litigation
- Provides an opportunity for early resolution in court for larger employers

- **Strengthening enforcement agency**

- Expedited hiring and filling vacancies at the LWDA and DIR to improve enforcement of employee labor claims

- **Judicial discretion (manageability)**

- Codified that a court may limit both the scope of claims and evidence presented at trial

- **Injunctive Relief now allowed**

Core PAGA reforms - recap

- Significantly changes to PAGA penalty structure, including reducing specific penalties and allowing for potential penalty caps for employers that proactively seek to comply with wage and hour laws
- Expanding which Labor Code sections can be cured (corrected) when there is a violation, so employees are made whole more quickly
- Protecting small employers by providing a more robust right to cure process through the California Labor and Workforce Development Agency (labor department) to reduce litigation and costs
- Providing an opportunity for early resolution in court for larger employers
- Increasing the share employees receive from penalties from 25 percent to 35 percent
- Limit claims to only those the employee suffered with the prior year

PAGA reform – limit liability by taking reasonable steps

- Employers can limit liability by taking “all reasonable steps” to avoid or correct Labor Code violations
- Be proactive both before you receive a notice and after
- “Reasonable steps” can include:
 - Payroll audits, and taking any related corrective action to the findings of those audits
 - Implementation and dissemination of lawful written policies related to Labor Code issues, such as meal and rest breaks, over time, timely payment of wages, etc.
 - Ensuring that supervisors are trained on lawful policies
 - Taking corrective steps if supervisors fail to follow policies and procedures

Implementing payroll audits

- Employers should periodically audit their wage and hour practices to ensure compliance with both the Labor Code and applicable Wage Orders
- Employers should review their payroll records, timesheets, policies, training and other relevant resources and documents related to the wage and hour laws and practices applicable to their company, which may include, but is not limited to, the following:
 - Timekeeping and records
 - Pay practices
 - Wage statements
 - Minimum wage
 - Overtime pay
 - Exempt employee classifications
 - Meal and rest breaks
 - Reporting time
 - Makeup time
 - Alternative workweek schedules
 - Paid sick leave
 - Expense reimbursements
 - Pay deductions
 - Final pay
 - Required posting

Disseminate policies

- The reasonable steps require “disseminating lawful written policies”
 - Employers must distribute their policies in some way that ensures employees receive them and have easy access to them for future reference
- For example,
 - via email, an HR/payroll system or even paper copies
 - Employee Handbook, and then have employees sign a document that not only confirms that they received the company’s wage and hour policies, but also acknowledging that they understand their obligation to follow the rules and requirements described therein
 - Having employees sign an acknowledgement — called a confirmation of receipt — employers are helping to ensure that employees receive and follow the policies and, should a dispute develop in the future, they will be able to provide evidence of the reasonable steps they took toward wage and hour compliance

Disseminating lawful written policies

- Well written policies communicate to employees the employer's expectations and important information about the company's practices and procedures, including, for example, how the company handles harassment complaints, leaves of absence, and various wage and hour procedures and rules
- Employers should maintain lawful written policies that clearly communicate to employees the rules and procedures regarding timekeeping, overtime pay, meal and rest breaks, and all of the other applicable wage and hour rules
- Employers should also confirm that their well written policies are adhered to and enforced

Enforce policies

- If employees violate the policy, employers can cite to the policy and must take appropriate corrective action
- Meal and rest breaks are only one example of the many complicated wage and hour law areas for which employers should have well written policies. Employers should also have policies addressing, for example:
 - Wage and hour training
 - Final pay
 - On call/standby time
 - Minimum wage
 - Split shift
 - Pay differentials
 - Reporting time pay
 - Makeup time
 - Meal and rest periods
 - Overtime for nonexempt employees
 - Pay for mandatory meetings/training
 - Timekeeping and off-the-clock work
 - Lactation accommodation
 - Expense reimbursement
 - Payment of wages
 - Sick leave
 - Personnel and payroll records

Training supervisors on wage and hour compliance

- Training frontline supervisors on company policies has many benefits
 - Training already occurs for harassment prevention and various workplace safety regulations
 - Frontline supervisors are the individuals most closely monitoring employees' compliance with the company's working hours, timekeeping practices, meal and rest breaks, and other practices associated with wage and hour requirements

Taking appropriate corrective action regarding supervisors

- The PAGA revisions state that “taking appropriate corrective action with regard to supervisors” is among the reasonable steps employers may take toward wage and hour compliance
- If a supervisor fails to enforce the company’s policies or applies a policy incorrectly, the employer must hold the supervisor accountable
- Policies should also include language stating the employer’s intent to take corrective action in the event that a supervisor deviates from or misapplies wage and hour policies

Stone v. Alameda Health System

- On August 15, 2024, the California Supreme Court issued a unanimous decision in *Stone v. Alameda Health System*, concluding that ***public employers are exempt*** from various California Labor Code provisions and PAGA penalties

Turrieta v. Lyft, Inc.

- In *Turrieta v. Lyft, Inc.*, the California Supreme Court limited a PAGA plaintiff's ability to intervene in another PAGA action and object to a settlement
- **If one case settles, what happens to the overlapping lawsuit?**
 - The California Supreme Court determined that the purpose and the express language of PAGA doesn't allow PAGA plaintiffs to intervene or object to the settlement in another PAGA action
 - Employers can cut off multiple lawsuits with one approved settlement

Uber/Lyft independent contractor ruling – California Supreme Court upholds Prop 22

- The ruling upholds Proposition 22, a voter-approved law that was passed in 2020. The law was the result of a \$200 million campaign by Uber, Lyft and DoorDash to avoid being forced to comply with Assembly Bill 5, which would have required them to consider their drivers as employees

Uber/Lyft independent contractor ruling – California Supreme Court upholds Prop 22

- The California Supreme Court's unanimous ruling that Uber and Lyft drivers remain independent contractors in California means that:
 - Uber/Lyft drivers may be classified as independent contractors
 - As independent contractors, drivers are responsible for many costs, including payroll taxes, health insurance, car maintenance, fuel and Social Security obligations
 - Drivers are not entitled to benefits like overtime pay, paid sick leave and unemployment insurance
 - Drivers are promised some benefits, such as guaranteed minimum earnings, health care stipends, occupational accident insurance and accidental death insurance

Leaves of absences – top myths

1. If the employees don't qualify for FMLA/CFRA, they do not qualify for a leave
2. Once they exhaust their 12 weeks of FMLA/CFRA, they must return to work or we can terminate them
3. Employees are entitled to indefinite leave
4. Employers are not required to extend the leave if it would be expensive
5. For leaves that extend beyond FMLA/CFRA, employers must hold their job open until they return
6. If the employee's job is not available when they return from leave, they can be terminated

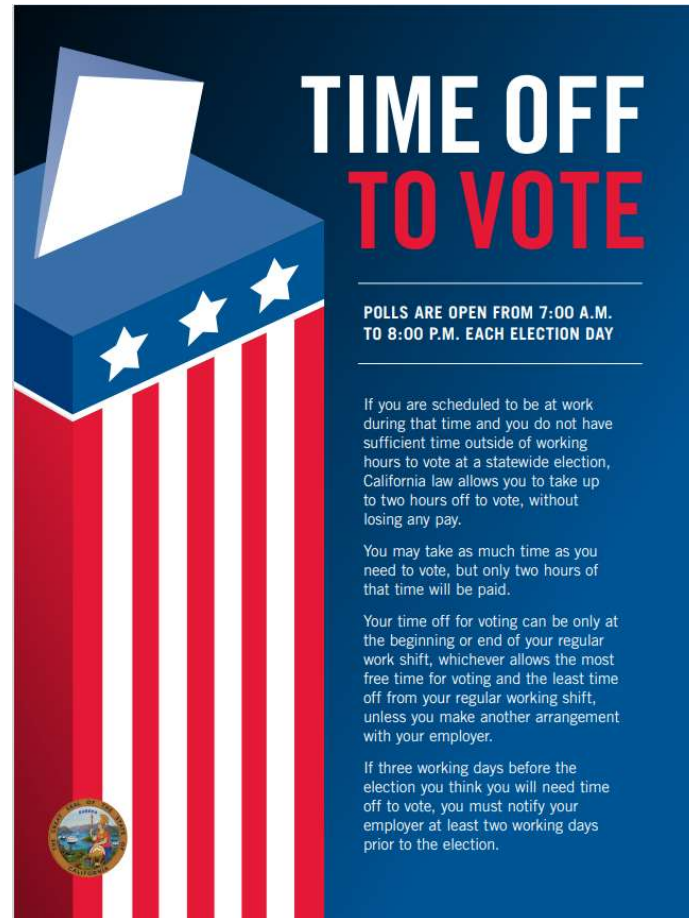
School activity leave (Labor Code 230.8)

- Covered employers: 25 or more employees at the same location
- Covered employees: parents, guardians, or grandparents with custody of a child in K-12 or licensed daycare
- Up to 40 hours of unpaid leave per year
 - Up to 8 hours a day
 - For school activities
 - Employer can require use of accrued PTO
 - Employees must provide reasonable notice

Voting leave

- Must post a notice informing employees of their rights at least 10 days before an election
 - Election Day: Tuesday, November 5, 2024
 - Deadline for Posting: Friday, October 25, 2024
- Compliant notices available on the Secretary of State's website
 - <https://www.sos.ca.gov/elections/time-vote-notices/>
- Employees are permitted to take two hours off to vote without loss of pay if there is insufficient time outside of working hours to vote.
 - Polls are open 7 am to 8 pm each day
 - Employees must provide notice at least two working days prior to the election

Voting Leave



**TIME OFF
TO VOTE**


**POLLS ARE OPEN FROM 7:00 A.M.
TO 8:00 P.M. EACH ELECTION DAY**

If you are scheduled to be at work during that time and you do not have sufficient time outside of working hours to vote at a statewide election, California law allows you to take up to two hours off to vote, without losing any pay.

You may take as much time as you need to vote, but only two hours of that time will be paid.

Your time off for voting can be only at the beginning or end of your regular work shift, whichever allows the most free time for voting and the least time off from your regular working shift, unless you make another arrangement with your employer.

If three working days before the election you think you will need time off to vote, you must notify your employer at least two working days prior to the election.



Reminders

- Minimum wage increase January 1, 2025
 - From \$16 to \$16.50
 - For exempt employees from \$66,560 to \$68,640
- Prop 32 (on November ballot)
 - \$17 for employers with 25 or fewer employees
 - \$18 for employers with 26 or more employees
- Revocation of Noncompete Agreements
 - Deadline was February 14, 2024

Questions





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