

Litigation Focus

California Workplace Law Update

January 31, 2025

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ACC Association of
Corporate Counsel
— SAN DIEGO —

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Agenda

- Case Updates
- Legislative Updates
- Predictions

Case Updates

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Turrieta v. Lyft

California Supreme Court

- Multiple drivers for Lyft, Inc. (Tina Turrieta, Brandon Olson and Million Seifu) filed separate actions under PAGA for alleged violations (failure to pay minimum wages, overtime premiums and business expense reimbursements).
- Turrieta and Lyft settled, but Olson and Seifu filed motions to intervene and object to the settlement.
- The trial court denied the motions to intervene, approved the settlement and denied motions to vacate the judgment.
- The Court of Appeal affirmed the trial court's decisions, stating Olson and Seifu lacked standing to challenge the judgment.

California Supreme Court's Decision

- In the ongoing PAGA action of another plaintiff asserting overlapping claims because such intervention would be inconsistent with the legislative scheme, which contemplated formal oversight and review of proposed settlements only by the California Labor and Workforce Development Agency and trial courts.
- The authority to commence and prosecute a PAGA action on the state's behalf did not include moving under **Code Civ. Proc., § 663**, to vacate a judgment in another plaintiff's separate PAGA action or objecting to the settlement of a separate action because PAGA did not contemplate such authority.

Stone v. Alameda Health System

California Supreme Court

- **Issue:** Whether all public entities are exempt from the obligations in the Labor Code such as meal and rest breaks and overtime, and whether penalties available under the Private Attorneys General Act (PAGA) apply to public entities.
- **Holding:** Public entities were exempt from obligations under the Labor Code unless specifically stated and that PAGA penalties do not apply to public employers.



Ramirez v. Charter Communications

California Supreme Court

- **Holding:** The arbitration agreement had provisions that were substantively unconscionable, but ordered remand to determine if the unconscionable provisions could be severed.

Can the arbitration agreement be saved?

- Unconscionable Clauses:
 - Lack of Mutuality
 - Shortened Statute of Limitations
 - Attorney Fee Shifting
- Upheld Discovery Limitations



Hernandez v. Sohnen Enterprises, Inc.

California Court of Appeal – Second Appellate District

- **Holding:** an arbitration agreement governed by the Federal Arbitration Act (FAA) is not subject to California's law requiring a finding of a material breach due to an employer's failure to pay arbitration fees. In other words, when an agreement falls within the scope of the FAA and does not expressly adopt California arbitration laws, the FAA preempts the provisions that mandate findings of breach and waiver.

Legislative Updates

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Assembly Bill 2049

- Amendments deadline for filing a motion for summary judgment/adjudication (MSJ) to at least **81 days** before the hearing on the motion.
- Opposition to motion must be filed at least **20 days** before hearing.
- Reply must be filed at least **11 days** before the hearing.
- Limits parties to one MSJ unless good cause shown.
- Prohibits reply brief from including any new evidentiary matter.
- Takes effect **January 1, 2025**.

PAGA Reform!

- Agreement reached between labor groups, business and legislature.
- Includes withdrawal of prior ballot measure to repeal and reform PAGA.
- Two bills were signed to amend different aspects of PAGA.



Senate Bill 92

- Effective immediately except for certain cure provisions that take effect October 1, 2024.
- Applies to civil actions brought on or after **June 19, 2024**.
- Expands the right to cure Labor Code violations for businesses with fewer than 100 employees and offers businesses with more than 100 employees the ability to seek an early resolution of Labor Code claims pending in court.

Assembly Bill 2288

- Effective immediately.
- Applies to civil actions brought on or after **June 19, 2024**.
- Focuses on revisions to penalties.

Early Evaluation Conference & Cure Options

New Procedure for Employers:

- After being served with a PAGA action complaint, employers can address and cure alleged Labor Code violations.
- At the initial appearance in the case, employers may request an early evaluation conference and a stay of the court proceeding.
- Employers must submit a confidential statement indicating which alleged violations they dispute and which they intend to cure.
- PAGA plaintiffs also submit a confidential statement explaining the factual basis for alleged violations, penalty amounts and acceptance or rejection of cure proposals.
- A neutral evaluator conducts the early evaluation conference to assess claims and explore settlement options.

Expanded Options for Employers with Fewer Than 100 Employees (Starting October 1, 2024):

- Employers in this category can cure alleged Labor Code violations upon receiving a PAGA notice.
- Besides the early evaluation conference, they may preempt a PAGA action by addressing the alleged violations in the notice.

Revised Penalties

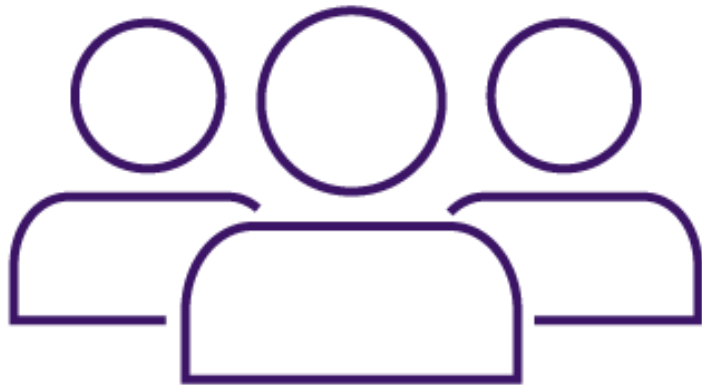
- Penalty Caps for Good Fair Compliance
- Reduced Penalties for Wage Statement Violations
- Reduced Penalties for Derivative Violations
- Reduced Penalties for Cured Violations
- Reduced Penalties for Isolated Violations
- Relief for Employers with Weekly Pay Periods
- Limited Aggravated Penalties
- Increased Employee Share of Penalties
- Injunctive Relief

Mitigating Circumstances

The civil penalty recovered in a civil action shall be no more than **15 percent** of the penalty if the employer took **“all reasonable steps”** to ensure compliance including any of the following:

- Periodic payroll audits
- Disseminated lawful written policies
- Training supervisors on applicable Labor Code and wage order compliance
- Took appropriate corrective action with regard to supervisors

Revised definition of “Aggrieved Employee”



- Personally suffered each of the violations
- Suffered the violations during the period prescribed by the statute of limitations.
- Exceptions for individuals represented by a nonprofit legal aid organization who has acted as PAGA counsel for at least 5 years prior to January 1, 2025.

Manageability



- Builds on *Estrada v. Royalty Carpet Mills*.
- Grants courts discretion to limit the scope of PAGA claims and evidence presented at trial.

Assembly Bill 1034

- Extends the exemption from the California Private Attorneys General Act (PAGA) for certain employees in the construction industry until **January 1, 2038**.
- Applies to employees in the construction industry who are covered by a collective bargaining agreement.



Senate Bill 1137

Clarifies that the Unruh Civil Rights Act, the provisions of the Education Code prohibiting discrimination in public education, and the California Fair Employment and Housing Act (FEHA) prohibit discrimination on the basis not just of individual protected traits, but also **on the basis of the intersectionality (e.g., combination) of two or more protected traits.**



Assembly Bill 1815

- Effective **January 1, 2025**.
- Amends the definition of “race” in the anti-discrimination provisions of the California Government Code, and Education Code, as well as the definitions of “protective hairstyles.”
 - Race is “inclusive of traits associated with race, including but not limited to hair texture and protective hairstyles.”
 - “Protective hairstyles” “include but are not limited to such hairstyles as braids, locs, and twists.”



Senate Bill 399

- Effective **January 1, 2025**.
- Enacts the **California Worker Freedom from Employer Intimidation Act**.
- Limits an employer's ability to communicate with employees regarding political or religious matters during mandatory meetings during working hours.
- The legislation includes "union organizing" under the definition of "matters."

Exemptions

Entities and/or activities that do not apply:

- Religious institutions
- Groups exempt from Title VII of the Civil Rights Act
- Political organizations
- Educational institutions that require students or instructors to attend lectures that include religious or political matters.
- Certain non-profits



Assembly Bill 3234

- Effective **January 1, 2025**.
- Imposes more transparency requirements for employers that audit their child labor practices.
- “Social Compliance Audit” is a voluntary, nongovernmental inspection or assessment of an employer’s operations and practices to verify that it complies with state and federal labor laws, including health and safety regulations regarding child labor.



Compliance Report Requirements

The following information must be included within the compliance report:

- The year, month, day and time the audit was conducted, and whether the audit was conducted during a day shift or night shift;
- Whether the employer engages in or supports the use of child labor;
- Whether children work within or outside regular school hours, or during night hours, for the employer; and
- A statement that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations.

Predictions for 2025

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Challenges to Rounding Policies

- California Supreme Court – Decision Pending
- Prior court decisions have been trending toward disapproval of rounding.
- Increased scrutiny from regulatory bodies.
- Even if rounding is not found to be prohibited by the courts, technological advancements make for difficulties in defending rounding policies.



Difficulty in Enforcing Arbitration Agreements

- California Court decisions have been chipping away at employer's ability to enforce arbitration agreements.
- Legislative changes including federal laws making enforcement more difficult.
- Encourage audits on agreements and onboarding.

PAGA Continues...

- Despite amendments continue to see PAGA claims on the rise
- Do not anticipate slow down in 2025 as the benefits for plaintiff's counsel to bring PAGA still exist post amendment.
- Plaintiff's counsel continuing to try to avoid arbitration via dismissal of individual PAGA claims.



Dispute Resolution for Civil Rights Department

- With the expansion of the small-employer family leave mediation program to include allegations regarding reproductive loss leave and its indefinite extension, there is an anticipated increase in the demand for mediation services provided by the Civil Rights Department.
- The Civil Rights Department is expected to continue its focus on initiating mediation within 60 days following a request, which helps in resolving disputes more efficiently and prevents the escalation of conflicts into lengthy litigation.

FEHA Claims, Especially Disability

- Single plaintiff actions commonly include a discrimination and/or harassment claim under FEHA.
- In recent years disability claims have been the largest category of discrimination claims.
- Expanding protections such as recent legislation.
- Trend toward higher settlements for FEHA claims encourage plaintiff's counsel.

Concluding Remarks

Questions?

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