

# PAGA Reform: What California Employers Need to Do Now

By James W. Ward, Employment Law Subject Matter Expert/  
Legal Writer and Editor

Since it was enacted in 2004, the Private Attorneys General Act (PAGA) has allowed individuals to file lawsuits against employers seeking penalties for such Labor Code violations as failure to properly provide overtime pay, missed meal and rest break, and inaccurate or noncompliant wage statements, to name just a few.

PAGA lawsuits are filed on behalf of the state of California, meaning aggrieved employees pursue penalties as if they were a state agency — and they can file PAGA lawsuits for not only themselves, but also all other aggrieved employees.

The PAGA has presented an enormous challenge for large and small employers alike who are trying to understand and comply with California's ever evolving wage and hour laws — and has resulted in a substantial increase in litigation that costs businesses of all sizes billions of dollars while bringing little benefit to workers.

On July 1, 2024, however, Governor Gavin Newsom signed into law two PAGA reform measures that, together, will curtail rampant PAGA lawsuit abuse while significantly reducing potential penalties that are attached to such claims.

To get employers familiar with the new PAGA reforms and started on compliance efforts, this white paper will discuss how employers can implement “reasonable steps” as outlined in the new law now in order to improve their wage and hour practices, ensure compliance and take advantage of the changes to the PAGA.

**Employers  
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## Core PAGA Reforms

The two measures Newsom signed on July 1 apply to civil actions filed on or after June 19, 2024, and they contain several core reforms to the PAGA, including, for example:

- Significantly changing the 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.
- Requiring the employee to personally experience the alleged violations brought in the claim.
- Limiting alleged violations to those that occurred within the last year (prior to reform, there was no time limitation).
- Increasing the share employees receive from penalties from 25 percent to 35 percent.

## Taking All Reasonable Steps Toward Compliance Caps Potential Penalties

While the PAGA reforms are all important, one of the most notable and actionable is the reform to PAGA's penalty provisions. The PAGA amendments reduced potential penalties in many ways, including lowering applicable penalties for wage statement violations or isolated errors. The PAGA amendments also provide penalty caps for employers that take "all reasonable steps" to comply with the law. If an employer has proactively taken all reasonable steps to comply with the law before receiving a PAGA notice or an employee records request (e.g., payroll or personnel records requests), then the maximum civil penalty is capped at 15 percent of the penalty sought under a PAGA action. Additionally, penalties are capped at 30 percent for employers who take all reasonable steps to prospectively comply after receiving a PAGA notice.

The law states that "all reasonable steps" includes, but is not limited to, the following:

- Conducting periodic payroll audits and taking action in response to audit results;
- Disseminating lawful written policies;
- Training supervisors on applicable Labor Code and wage order compliance; and
- Taking appropriate corrective action with regard to supervisors.

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Due to the complicated nature of California's wage and hour laws, and the potential consequences of noncompliance, the actions listed above have been longtime "best practices" in employers' ongoing efforts to comply with the law. Under the PAGA reform measures, however, it is critically important for employers to engage in these steps now — prior to receiving a records request or PAGA notice — even if they think their policies and practices are already in compliance with the law.

## Implementing Payroll Audits

Because California wage and hour law is both complicated and constantly changing, it's important for employers to periodically audit their wage and hour practices to ensure they are in compliance with both the Labor Code and applicable Wage Orders — and, when a potential compliance issue comes up, that they quickly identify problematic areas and take appropriate corrective action.

A wage and hour audit consists of a comprehensive review of the company's wage and hour policies and practices to determine whether they comply with the law. Employers should review, for example, 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 classification.
- Meal and rest breaks.
- Reporting time.
- Makeup time.
- Alternative workweek schedules.
- Paid sick leave.
- Expense reimbursements.
- Pay deductions.
- Final pay.
- Required postings.

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**Periodic  
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efforts.**

If the self-audit reveals a potential issue, consider seeking advice from legal counsel to ensure you understand and are complying with all relevant laws and regulations.

There are a lot of reasons why employers might want to put off an audit — it's time consuming and they don't see an immediate return on the investment, they believe their practices are already in compliance, or they're unsure of what to look for or how to get started. However, periodic wage and hour audits are critical to employers' overall compliance efforts, and they now take on even greater significance under the previously discussed PAGA reforms, potentially helping employers significantly reduce penalties if they're hit with a PAGA claim.

Though the thought of conducting an audit can seem daunting, there are tools and resources available to employers to assist them through this process: At the heart of CalChamber's comprehensive [PAGA Wage and Hour Compliance Toolkit](#), for instance, is the [Wage and Hour Payroll Audit Checklist for California Employers](#), which is free to CalChamber members and walks employers through each of the topics listed above, and more, to assist them in spotting any potential problems they need to address.

## Disseminating Lawful Written Policies

Establishing lawful written policies has many benefits for both employers and employees. Well written policies communicate to employees not only the employer's expectations, but also 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 not only establish and maintain lawful written policies, but also disseminate them and have employees sign a confirmation of receipt.**

In light of California's complex wage and hour requirements — and the fact that it's very easy to make mistakes in these areas (which can be very costly) — 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.

For example, a well-meaning employee might clock out for a lunch break, remain on the premises, and check their email or conduct some other light work-related tasks during their unpaid meal period. Under the law, however, that becomes compensable work time. The employer would also owe an additional one-hour meal period premium for the noncompliant meal break and, depending on the circumstances, additional dominoes, so to speak, could fall, including claims for failure to pay wages, inaccurate wage statements and waiting time penalties.

Establishing a lawful written meal and rest break policy describing the requirement for employees to take an uninterrupted, unpaid meal period of at least 30 minutes — for which they must clock out and during which they will be relieved of all duty and prohibited from doing off-the-clock work — goes a long way toward complying with the law. And for those times when employees don't follow the rules, employers can cite to the policy and 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;
- 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; and
- Personnel and payroll records.

**Well-written policies go a long way toward compliance efforts — effectively communicating company rules, procedures, expectations and potential consequences for violating policy.**

It's not enough, however, to have lawful policies on the books if employees neither know about nor have easy access to them. The PAGA reform language hints at this, listing among the reasonable steps "disseminating lawful written policies" — in other words, employers must distribute their policies in some way that ensures employees receive them and have easy access to them for future reference.

To help ensure employees receive your wage and hour policies, you can actively disseminate them in some fashion, either separately — via email, an HR/payroll system or even paper copies, for example — or within their 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. By 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.

## Training Supervisors on Wage and Hour Compliance

Training frontline supervisors on company policies has many benefits. In fact, this is already required in certain areas, such as 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. As such, it's critical for supervisors to know the policies so they can educate employees on the rules and take corrective action to enforce them when necessary.

To help ensure that employees are compensated according to the law — and to demonstrate that your company has taken reasonable steps to comply with the law — you should train your managers, supervisors and any other individuals with payroll-related tasks on your wage and hour policies and practices.

To support employers' wage and hour training and overall compliance efforts, employers may implement a separate wage and hour training policy, which describes the company's wage and hour training practices, including a list of wage and hour topics specific to the organization.

## Taking Appropriate Corrective Action Regarding Supervisors

In addition to training 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.

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This step follows naturally from the prior step regarding training, and it's important for the same reasons.

Supervisors are the individuals most closely monitoring employees' compliance with the company's wage and hour practices. However, if a supervisor fails to enforce the company's policies or applies a policy incorrectly, the employer must hold the supervisor accountable and take corrective action, which includes not only correcting the underlying error (for example, a meal break violation, overtime error, etc.), but also retraining personnel on the policy and, if appropriate, taking disciplinary action.

Additionally, if employers implement a wage and hour training policy that reflects their practice of training supervisors on their wage and hour policies and practices, the policy 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.

## Wage and Hour Compliance Resources

There's no doubt that navigating wage and hour requirements is complicated, but CalChamber is here to help. Our new [PAGA Wage and Hour Compliance Toolkit](#) contains more than 60 digital and physical resources to assist employers in meeting their wage and hour requirements under the California Labor Code and applicable wage orders, including:

- Access to three recently recorded wage and hour webinars;
- 16 wage and hour policies (in English and Spanish);
- 40+ wage and hour forms, including a comprehensive payroll audit checklist; and
- Employment law posters for your workplace.

To learn more about the PAGA Wage & Hour Compliance Toolkit, visit the [CalChamber Store](#).

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### CalChamber Can Help

Did you find this helpful? Sign up for a **free 7-day trial of HRCalifornia**, which includes access to the website's HR Library, compliance tools, and select forms and checklists that help California employers with HR compliance. Limited access with free trial.



PAGA Wage and  
Hour Compliance  
Toolkit



Employee Handbook  
Creator



California Wage Order  
Posters

To learn more about CalChamber resources, please call our Customer Service Representatives at (800) 331-8877, Monday through Thursday from 8 a.m. to 5 p.m. PT, and Friday from 8 a.m. to 4 p.m. PT.

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