

2024 PAGA REFORM

Important Development for Employers

Presenters:

Mollie Burks

Linh T. Hua

Matthew Theriault



GORDON REES SCULLY MANSUKHANI
YOUR **50 STATE** LAW FIRM™

Speakers



Mollie Burks

Partner
Walnut Creek and Los Angeles
mburks@grsm.com



Linh T. Hua

Partner
Los Angeles
lhua@grsm.com



Matthew Theriault

Senior Counsel
Los Angeles
mtheriault@grsm.com

Disclaimer

This presentation is for general informational purposes only and is not legal advice. It is not designed to be comprehensive and it may not apply to your particular facts and circumstances. Consult as needed with your own attorney or other professional advisor.

This presentation does not amend, or otherwise affect, the provisions or coverages of any insurance policy. Any discussion of coverages is about those generally available in the marketplace and is not based specifically on the policies or products of any particular carrier.



2024 PAGA REFORM – TODAY’S TOPICS

- Private Attorneys General Act of 2004
- Prior PAGA Reform Legislation
- Key Developments in the 2024 PAGA Reform
- Looking Forward: Best Practices for Employers



2024 PAGA REFORM – HISTORY

- Private Attorneys General Act of 2004
- Prior PAGA Reform Legislation
- Effective June 19, 2024
 - » *Applies to complaints filed on or after June 19, 2024*
 - » *Does not apply if LWDA notice was served before June 19, 2024*



2024 PAGA REFORM – KEY DEVELOPMENTS

- Opportunities to Reduce Penalties
- Additional Defense Tools in Litigation
- Strengthen Cure Process



2024 PAGA REFORM – DEFENSE TOOLS

- Named Plaintiff must have experienced alleged violation
- One-year statute of limitations, subject to tolling
- Weekly pay receive reduced penalties
- Manageability
- No double dipping on derivative claims
 - » *wage statement penalties*
 - » *final wage/waiting time penalties*



2024 PAGA REFORM – REDUCED PENALTIES

- 65% to the LWDA and 35% to aggrieved employees
- \$100 each aggrieved employee for each pay period
- \$50 each aggrieved employee for isolated incident
- \$25 for wage statements that are accurate and not confusing
- Judicial discretion for reductions
- Further percentage reductions to penalties



2024 PAGA REFORM – REDUCED PENALTIES

- Employer must take “all reasonable steps” to be eligible for reduction in PAGA penalties
- **85%** discount
 - Prior to LWDA notice or statutory records request
- **70%** discount
 - Within 60 days after LWDA notice



2024 PAGA REFORM – REASONABLE STEPS

- All Reasonable Steps for Reduced Penalties
 - Totality of circumstances
 - Employer’s size and resources
 - Nature, severity, and duration of alleged violation



2024 PAGA REFORM – REASONABLE STEPS

- Statutory examples of “reasonable steps”
 - Periodic payroll audits
 - Lawful written workplace policies
 - Properly trained supervisors
 - Corrective action against management
- “All reasonable steps” + cure = no PAGA penalties



2024 PAGA REFORM – HOW TO CURE

- Cure = correct the violation and the employee is “made whole”
 - » Pay any owed wages dating back 3 years
 - » 7% interest
 - » Liquidated damages
 - » Attorneys’ fees and costs



2024 PAGA REFORM – WAGE STATEMENT CURE

- Effective October 1, 2024, for wage statement violations only:
 - Employer may cure within 33 days of LWDA notice
 - Employer gives notice to employee and LWDA describing cure
 - Employee can dispute cure
 - Agency will review (within 17 days of dispute) and issue decision
 - Employee right to appeal to superior court
 - Tolls the filing date of complaint



2024 PAGA REFORM – WAGE STATEMENT CURE

- How to cure wage statements
 - Written notice of correct employer name/address and corresponding pay periods
 - Reissue compliance wage statements for three (3) years prior to date of LWDA notice
 - » *Electronic, digital distribution now accepted*

2024 PAGA REFORM – LARGE EMPLOYERS (100+)

- Request Early Evaluation Conference and Stay
 - Request by employer's first appearance
 - Address if the alleged violation happen
 - Describe any cure by the employer
 - Strengths and weaknesses of allegations and defenses
 - Explore settlement options



2024 PAGA REFORM – LARGE EMPLOYERS (100+)

- Early Evaluation Conference
 - Court orders conference and stay (*no more than 70 days*)
 - Employer submits confidential plan to cure (*21 days after order*)
 - Employer submits statement of defenses (*including evidence*)
 - Employee responds to employer statements (*21 days, includes facts, penalties, grounds to dispute cure*)
 - Neutral evaluates
 - » If approved cured, employer shows proof of cure (*10 days*)
 - » If disputed, employer may file motion with court

2024 PAGA REFORM – SMALL EMPLOYERS (<100)

- Effective October 1, 2024, submit confidential proposal to cure (*33 days of LWDA Notice*)
- If cure is facially sufficient, conference is set within 30 days of order
 - Determine if proposed cure is sufficient
 - Review additional information
 - Deadline to complete cure
 - Calculate amount of money to cure



2024 PAGA REFORM – SMALL EMPLOYERS (<100)

- Timing to cure: no more than 45 days from conference
 - Agency verifies cure is completed (*within 20 days*)
 - If agency approves cure, employee may request hearing (*30 days*)
 - Agency will issue determination on cure (*20 days*)
 - Employee may appeal to trial court
- If cure is not facially sufficient, parties can proceed with litigation
- May also request early evaluation conference and stay



2024 PAGA REFORM – RISKS TO EMPLOYERS

- Heightened PAGA penalty: \$200 per aggrieved employee per pay period
 - (1) *Within 5 years, prior finding of unlawful policy or practice*
 - (2) *Violation of malicious, fraudulent, or oppressive*
- Injunctive relief available
- Piecemeal litigation and/or settlement negotiations
- Increased self-policing (cost; retention)



2024 PAGA REFORM – PREEMPTIVE ACTIONS

- All Reasonable Steps
 - » *Time record audits*
 - » *Training courses*
 - » *Additional documentation*
 - » *Unique opportunities for your industry*
- Diligent communication with your attorneys
- Annual review of policies, practices, records



QUESTIONS?



GORDON REES SCULLY MANSUKHANI

YOUR **50 STATE** LAW FIRM™

grsm.com