

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2288 (Kalra)
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Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: Yes
ME

SUBJECT

Labor Code enforcement: private civil actions

DIGEST

This bill codifies negotiated reforms to the California Labor Code's Private Attorneys General Act of 2004 (PAGA) to further the purpose and intent of PAGA to protect workers from labor code violations. Other negotiated reforms to PAGA are in SB 92 (Umberg, 2024). AB 2288 will become operative only if SB 92 is enacted and takes effect on or before January 1, 2025. AB 2288 contains an urgency clause.

EXECUTIVE SUMMARY

PAGA was enacted in 2004 to protect workers by authorizing individual workers to step into the role of the Labor and Workforce Development Agency (Agency) and bring lawsuits against employers and recover civil penalties on behalf of the State. The bill that enacted PAGA was sponsored by the California Labor Federation, AFL, CIO and the California Rural Legal Assistance Foundation.

PAGA allows employees to obtain 25% of civil penalties imposed on employers. The other 75% is allocated to the Agency for the purposes of enforcement and education. Employees are not entitled to seek injunctive relief under PAGA.

It has been twenty years since the enactment of PAGA. AB 2288 updates and strengthens several provisions in PAGA to provide a more effective tool for labor law enforcement. In the decades since its passage, California workers have seen a dramatic rise in the use of forced arbitration, expanded contingent work, and a resulting increase in the reliance on PAGA to hold employers accountable who violate worker rights. These changes that will be codified through AB 2288 further the original goal of the statute, allowing a worker to stand in the shoes of the state and sue on behalf of all workers who suffered a violation, while updating its provisions to address changes to the economy and the enforcement landscape. It increases the role of the Agency and better incorporates the available remedies, processes, and outcomes utilized or sought by the Agency in its enforcement efforts. This bill improves PAGA in the following

ways: the bill add injunctive relief; the bill decreases penalties for less serious violations of the Labor Code and increases penalties for more serious violations of the Labor Code; the bill reduces penalties for employers who quickly come into compliance before or after they receive a notice; the bill defines “cure” to mean an employer corrects each violation alleged and is in compliance with the underlying statutes specified, workers are repaid all back wages for three years plus interest, liquidated damages are ordered as required by statute, reasonable lodestar attorney fees are ordered, and that the cure is completed within the specified period after an employer receives a notice; the bill limits standing to an employee who has suffered the same types of violations alleged but maintains broad standing for employees represented by non-profit legal service providers in an effort to ensure the protection of undocumented workers and other vulnerable workers; the bill increases the proportion of penalties that are granted to workers from 25% to 35% and decreases the proportion of penalties that are granted to the Agency from 75% to 65%; and the bill allows more judicial discretion so that the courts can raise penalties or lower penalties in order to avoid unjust outcomes.

As described by the California Labor Federation, AFL-CIO, the PAGA agreement will: preserve PAGA as a unique tool for enforcement; encourage employer compliance; promote making workers whole; improve outcomes; make changes to standing; reduce penalties; and strengthen state enforcement. As described by the California Chamber of Commerce, these reforms “will ensure that workers are having claims resolved more quickly and that businesses and non-profits that comply with the law are not penalized.”

The bill is supported by the California Labor Federation, AFL-CIO, and many organizations that represent workers, as well as the California Chamber of Commerce, and many organizations that represent employers. The Committee received no opposition to AB 2288.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. (Labor Code § 2699 (a).)
- 2) Defines “person” as having the same meaning as defined in Labor Code § 18, which defines “person” as “any person, association, organization, partnership, business trust, limited liability company, or corporation.” (Labor Code § 2699 (b).)

- 3) Defines “aggrieved employee” as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed. (Labor Code § 2699 (c).)
- 4) Defines “cure” as meaning that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by PAGA, and any aggrieved employee is made whole. (Labor Code § 2699 (d).)
- 5) Provides that a violation of Labor Code § 226 (a)(6) and (a)(8) shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to Labor Code § 2699.3 (c)(1). (Labor Code § 2699 (d).)
- 6) Provides that for purposes of PAGA, whenever the Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty. (Labor Code § 2699 (e).)
- 7) Provides that in any action by an aggrieved employee seeking recovery of a civil penalty available under Labor Code § 2699 (a) or Labor Code § 2699 (f), a court may award a lesser amount than the maximum civil penalty amount specified by PAGA if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. (Labor Code § 2699 (e).)
- 8) Provides that for all provisions of the Labor code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: if, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is \$500; if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation; and if the alleged violation is a failure to act by the Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty. (Labor Code § 2699 (f).)
- 9) Specifies that except as provided in Labor Code § 2699 (g)(2), an aggrieved employee may recover the civil penalty described in Labor Code § 2699 (f) in a civil action pursuant to the procedures specified in Labor Code § 2699.3 filed on behalf of themselves and other current or former employees against whom one or more of the alleged violations was committed. (Labor Code § 2699 (g).)

- 10) Provides that any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to Labor Code § 2699.3 (a)(1)(B) or Labor Code § 2699.3 (c)(1)(B). (Labor Code § 2699 (g).)
- 11) Provides that nothing in PAGA shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under PAGA. (Labor Code § 2699 (g).)
- 12) Provides that no action shall be brought under PAGA for any violation of a posting, notice, agency reporting, or filing requirement of the Labor Code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting. (Labor Code § 2699 (g)(2).)
- 13) Specifies that no action may be brought under Labor Code § 2699 by an aggrieved employee if the Agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Labor Code § 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of themselves or others or initiates a proceeding pursuant to Labor Code § 98.3. (Labor Code § 2699 (h).)
- 14) Provides that except as provided in Labor Code § 2699 (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees. (Labor Code § 2699 (i).)
- 15) Provides that civil penalties recovered under Labor Code § 2699 (f)(1) shall be distributed to the Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code, to be continuously appropriated to supplement and not supplant the funding to the Agency for those purposes. (Labor Code § 2699 (j).)
- 16) Specifies that nothing in PAGA is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of the Labor Code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment. (Labor Code § 2699 (k).)
- 17) Provides that for cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action

pursuant to PAGA, provide the Agency with a file-stamped copy of the complaint that includes the case number assigned by the court. (Labor Code § 2699 (l)(1).)

- 18) Requires that the superior court review and approve any settlement of any civil action filed pursuant to PAGA and that the proposed settlement shall be submitted to the Agency at the same time that it is submitted to the court. (Labor Code § 2699 (l)(2).)
- 19) Requires a copy of the superior court's judgment in any civil action filed pursuant to PAGA and any other order in that action that either provides for or denies an award of civil penalties under the Labor Code to be submitted to the Agency within 10 days after entry of the judgment or order. (Labor Code § 2699 (l)(3).)
- 20) Provides that items required to be submitted to the Agency under Labor Code § 2699 (k) or to the Division of Occupational Safety and Health pursuant to Labor Code § 2699.3 (b)(4), shall be transmitted online through the same system established for the filing of notices and requests under Labor Code § 2699.3 (a) and (c). (Labor Code § 2699 (l)(4).)
- 21) Specifies that Labor Code § 2699 shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law. (Labor Code § 2699 (m).)
- 22) Allows the Agency or any of its departments, divisions, commissions, boards, or agencies to promulgate regulations to implement PAGA. (Labor Code § 2699 (n).)
- 23) Provides that the Commissioner may prosecute all actions for the collection of wages, penalties, and demands of persons who in the judgment of the Commissioner are financially unable to employ counsel and the Commissioner believes have claims which are valid and enforceable. Provides that the Commissioner may also prosecute actions for the return of worker's tools which are in the illegal possession of another person. Provides that the Commissioner may prosecute an action for the collection of wages and other moneys payable to employees or to the state arising out of an employment relationship or order of the Industrial Welfare Commission. Provides that the Commissioner may also prosecute actions for wages or other monetary benefits that are due the Industrial Relations Unpaid Wage Fund. (Labor Code § 98.3.)
- 24) Identifies notice requirements a plaintiff must complete prior to initiating a PAGA claim for specified violations of the Labor Code, including giving written notice by online filing to the Agency and by certified mail to the employer of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violation. (Labor Code § 2699.3 (a).)

- 25) Identifies notice requirements a plaintiff must complete prior to initiating a PAGA claim for specified violations of the Labor Code, including giving notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Agency, of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violation. (Labor Code § 2699.3 (b).)
- 26) Authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under their jurisdiction. Further authorizes the Commissioner to provide for a hearing to recover civil penalties due against any employer or other person acting on behalf of an employer. States that it is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the rights of the parties. (Labor Code § 98 (a).)

This bill:

- 1) Provides that notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Labor Code § 2699.3.
- 2) Defines “aggrieved employee” as any person who was employed by the alleged violator and personally suffered each of the violations alleged during the period prescribed under Civil Procedure Code § 340, except that for purposes of actions brought pursuant to 3), below, “aggrieved employee” means any person who was employed by the alleged violator against whom one or more of the alleged violation was committed within the period prescribed under Civil Procedure Code § 340.
- 3) Provides that notwithstanding 2), above, a nonprofit legal aid organization, as defined, and has served as counsel of record in civil actions under PAGA for at least five years prior to January 1, 2025, may file a civil action pursuant to PAGA as counsel of record for an aggrieved employee on behalf of the employee and one or more current or former employees against whom one or more of the alleged violations was committed. Specifies that nothing in this provision establishes standing for the nonprofit legal aid organization as a party in the civil action.

- 4) Provides that for purposes of 2699.3 (c) and (f), and except for violations of 226 (a), “cure” means that the employer corrects the violation alleged by the aggrieved employee, is in compliance with the underlying statutes specified in the notice required by PAGA, and each aggrieved employee is made whole. Provides that an employee who is owed wages is made whole when the employee has received an amount sufficient to recover any owed unpaid wages due under the underlying statutes specified in the notice dating back three years from the date of the notice, plus 7 percent interest, any liquidated damages as required by statute, and reasonable lodestar attorney’s fees and costs to be determined by the Agency or the court. Provides that in case of a dispute over the amount of unpaid wages due, nothing in PAGA prohibits an employer from curing the alleged violations by paying amounts sufficient to cover any unpaid wages that the Agency or court determine could reasonably be owed to the aggrieved employees based on the violations alleged in the notice.
- 5) Provides that a violation of Labor Code § 226 (a)(8) shall be considered cured only upon a showing that the employer has provided written notice of the correct information to each aggrieved employee. Specifies that such notice may be provided in summary form but shall identify correct information for each pay period in which a violation occurred.
- 6) Provides that a violation of Labor Code § 226 (a) (1) through (7) and § 226 (a)(9) shall be considered cured only upon a showing that the employer has provided, at no cost to the employee, a fully compliant, itemized wage statement or, if such information is customarily provided in digital form, reasonable access to a digital or computer-generated record or records maintained in the ordinary course of business containing the same information required on a fully compliant, itemized wage statement, to each aggrieved employee for each pay period during which the violation occurred during the three years prior to the date of the notice. Provides that this bill does not impact any right the employee has to request copies of employment records pursuant to Labor Code sections §§ 226, 432, and 1198.5.
- 7) Provides that for purposes of PAGA, whenever the Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty or seek injunctive relief, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty and award injunctive relief.
- 8) Provides that in any action by an aggrieved employee seeking recovery of a civil penalty available under Labor Code § 2699 (a) or Labor Code § 2699 (f), a court may award a lesser amount than the maximum civil penalty amount specified by PAGA, including the penalty amounts in (g) and (h), or may, notwithstanding the limitations set forth in (g) and (h) exceed the limitations set forth in those subdivisions, if, based on the facts and circumstances of the particular case, to do

otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

- 9) Establishes that for all provisions of the Labor code except those for which a civil penalty is specifically provided, the civil penalty is \$500 for a violation of a Labor code provision, if, at the time of the alleged violation, the person does not employ one or more employees.
- 10) Establishes that for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the civil penalty is \$200 for each aggrieved employee per pay period, for a violation of a Labor code provision, if, at the time of the alleged violation, the person employs one or more employees, and within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful
- 11) Establishes that for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the civil penalty is \$200 for each aggrieved employee per pay period, for a violation of a Labor code provision, if, at the time of the alleged violation, the person employs one or more employees, and the court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive.
- 12) Establishes that for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the civil penalty for a violation of a Labor code provision, is \$100 for each aggrieved employee per pay period, if the person employs one or more employees, except that if, the alleged violation is a violation of Labor Code § 226 (a)(1) through (7) and § 226 (a)(9), the only civil penalty applicable under PAGA is \$25 for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by Labor Code § 226 (a). If the alleged violation is a violation of Labor Code § 226 (a)(8), the civil penalty applicable under PAGA for the violation is \$25 for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer. This reduced penalty does not apply if the employer has failed to provide an itemized payroll statement during any of the pay periods at issue. The civil penalty is \$50 for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.
- 13) Provides that if the alleged violation is a failure to act by the Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

- 14) Provides that in any civil action under PAGA for an alleged violation of the Labor code, if, prior to receiving the notice of violation required by Section 2699.3, or prior to receiving a request for records pursuant to Labor Code §§ 226, 432, or 1198.5 from the aggrieved employee or the employee's counsel, the person alleged to have committed the noticed violation has taken all reasonable steps, as defined, to be in compliance with all provisions identified in the notice, the civil penalty that may be recovered in a civil action pursuant to these specific provisions shall not be more than 15% of the penalty sought under subdivision Labor Code § 2699 (a) or (f). Whether the employer's conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer, and the nature, severity and duration of the alleged violations. This reduction to 15 percent does not apply if the civil penalty recovered is recovered pursuant to Labor Code § 2699 (f)(2)(B).
- 15) Provides that in any civil action under PAGA for an alleged violation of the Labor Code, if within 60 days after receiving the notice of violation required by Labor Code § 2699.3, the person alleged to have committed the noticed violation has taken all reasonable steps, as defined, to prospectively be in compliance with all provisions identified in the notice, the civil penalty that may be recovered in a civil action under PAGA shall not be more than 30 percent of the penalty sought under Labor Code § 2699 (a) or (f). Whether the employer's conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer, and the nature, severity and duration of the alleged violations. This reduction to 30% does not apply if the civil penalty recovered is recovered pursuant to Labor Code § 2699 (f)(2)(B).
- 16) Specifies that an aggrieved employee shall not collect a civil penalty for any violation of Labor Code §§ 201, 202, 203, or for a violation of Labor Code § 204 that is neither willful or intentional, or a violation of Labor Code § 226 that is neither knowing or intentional nor a failure to provide a wage statement, that is in addition to the civil penalty collected by that aggrieved employee for the underlying unpaid wage violation. Provides that nothing in PAGA or in Labor Code § 2699 (e)(2) shall prevent a court, in awarding a civil penalty, from reducing the penalty for any alleged violation if the same conduct or omission resulted in multiple violations of this code.
- 17) Provides that an employer who satisfies Labor Code § 2699 (g) or (h) and cures a violation shall not be required to pay a civil penalty for that violation. Provides that an employer who cures a violation of Labor Code § 226 (a) as set forth above shall not be required to pay a civil penalty for that violation. Provides that any other employer shall pay a civil penalty of no more than \$15 per employee per pay period for the statute of limitations set forth in Code of Civil Procedure § 340 for any violations that the employer cures.

- 18) Specifies that except as provided in 20), below, an aggrieved employee may recover the civil penalty described in Labor Code § 2699 (f) and may be awarded injunctive relief in a civil action pursuant to the procedures specified in Labor Code § 2699.3 filed on behalf of the employee and other current or former employees against whom a violation of the same provision was committed. Provides that any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to Labor Code § 2699.3 (a)(1)(B) or Labor Code § 2699.3 (c)(1)(B).
- 19) Continues to provide that nothing in PAGA shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under PAGA. (Labor Code § 2699 (g).)
- 20) Continues to provide that no action shall be brought under PAGA for any violation of a posting, notice, agency reporting, or filing requirement of the Labor Code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.
- 21) Continues to specify that no action may be brought under Labor Code § 2699 by an aggrieved employee if the Agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Labor Code § 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of the employee or others or initiates a proceeding pursuant to Labor Code § 98.3.
- 22) Provides that except as provided in Labor Code § 2699 (n), which is 23), below, civil penalties recovered by aggrieved employees shall be distributed as follows: 65 percent to the Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor code, to be continuously appropriated to supplement and not supplant the funding to the Agency for those purposes; and 35 percent to the aggrieved employees.
- 23) Continues to provide that civil penalties recovered under Labor Code § 2699 (f)(1) shall be distributed to the Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.
- 24) Continues to specify that nothing in PAGA is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of the Labor Code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

- 25) Continues to provide that for cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to PAGA, provide the Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.
- 26) Continues to require that the superior court review and approve any settlement of any civil action filed pursuant to PAGA and that the proposed settlement shall be submitted to the Agency at the same time that it is submitted to the court.
- 27) Continues to require a copy of the superior court's judgment in any civil action filed pursuant to PAGA and any other order in that action that either provides for or denies an award of civil penalties under the Labor Code to be submitted to the Agency within 10 days after entry of the judgment or order.
- 28) Continues to provide that items required to be submitted to the Agency under Labor Code § 2699 (k) or to the Division of Occupational Safety and Health pursuant to Labor Code § 2699.3 (b)(4), shall be transmitted online through the same system established for the filing of notices and requests under Labor Code § 2699.3 (a) and (c).
- 29) Continues to specify that Labor Code § 2699 shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law.
- 30) Continues to allow the Agency or any of its departments, divisions, commissions, boards, or agencies to promulgate regulations to implement PAGA.
- 31) Specifies that for purposes of Labor Code section 2699, the penalty recovered pursuant to PAGA shall be reduced by one-half if the employees' regular pay period is weekly rather than biweekly or semimonthly.
- 32) Provides that the superior court may limit the evidence to be presented at trial or otherwise limit the scope of any claim filed pursuant to PAGA to ensure that the claim can be effectively tried.
- 33) Provides that nothing in PAGA shall prevent a court from consolidating or coordinating civil actions filed pursuant to PAGA alleging legally or factually overlapping violations against the same employer.
- 34) Specifies that amendments made to PAGA through this bill shall apply to a civil action brought on or after June 19, 2024, except that, the amendments made to PAGA through this bill shall not apply to a civil action with respect to which the notice required by Labor Code § 2699.3 (a)(1)(A), (b)(1), or (c)(1)(A) was filed before June 19, 2024.

- 35) Provides that the provisions of this bill only become operative if SB 92 (Umberg) is enacted and takes effect on or before January 1, 2025.
- 36) Provides that this is an urgency statute and shall go into immediate effect and the facts constituting the necessity of the urgency are as follows: in order to further the purpose and interest of PAGA to protect workers from labor violations and address a pending ballot measure, it is necessary for this statute to take effect immediately.

COMMENTS

1. Stated need for this bill

According to the author:

Since 2004, the Private Attorneys General Act (PAGA) has been one of the most powerful tools workers in California have to enforce their labor rights. However, a February 2024 report by the UCLA Labor Center highlighted the continued rampant levels of wage theft California workers face, with nearly 600,000 workers experiencing a wage violation, totaling almost \$2 billion in losses annually. Unfortunately, only \$40 million, or 2% of those lost wages, are recovered through the Labor Commissioner's wage claim process.

Combined with existing constraints imposed by forced arbitration and the State's limited enforcement resources, PAGA remains one of the only tools workers have to take collective action to remedy violations of their rights. AB 2288 makes several reforms to PAGA to improve its effectiveness as a vital tool to enforce workers' rights, promote making workers whole, and incentivize employer compliance. Specifically, this bill adds injunctive relief as a remedy, adjusts penalty rates to incentivize employers to either take reasonable steps to quickly come into compliance or receive higher penalties for bad actors who act maliciously, and increases a worker's ability to get back wages. Together, these provisions ensure that PAGA can continue to help enforce California's labor laws and will ultimately protect workers.

According to Governor Gavin Newsom:¹

We came to the table and hammered out a deal that works for both businesses and workers, and it will bring needed improvements to this system. This proposal maintains strong protections for workers, provides incentives for businesses to comply with labor laws and reduces litigation.

¹ "Governor Newsom & legislative leaders announce agreement on PAGA reform" (June 18, 2024) available at [Governor Newsom & legislative leaders announce agreement on PAGA reform | Governor of California](#).

2. From the perspective of organized labor and employer organizations

The California Labor Federation, AFL-CIO and a number of organizations that support workers writes the following in support of the bill:

The California Labor Federation and the undersigned unions support AB 2288 (Kalra) and SB 92 (Umberg), which make reforms to the Private Attorneys General Act (PAGA) while preserving this essential tool for enforcing state labor laws. The reforms we negotiated with the California Chamber of Commerce are all aimed at incentivizing compliance and ensuring workers are made whole for wage theft. With these reforms, PAGA will not only allow for penalties when employers break the law, but it will also increase a worker's ability to get back wages with interest, stop illegal practices, and get a bigger share of civil penalties. This bill expands PAGA remedies by adding injunctive relief. It will also make it easier to hold bad actors accountable, with new ways to get to a higher penalty tier and additional judicial discretion to increase penalties where the outcome would otherwise be unjust.

Together, these bills will:

(1) Preserve PAGA as a unique tool for enforcement

- Protect the only law that allows one worker to sue on behalf of all co-workers who suffered similar labor law violations.
- Maintain the ability of a worker who signed a forced arbitration agreement to use PAGA to enforce labor laws while standing in the shoes of the state.

(2) Encourage employer compliance

- Reduce penalties on employers who take all reasonable steps to quickly come into compliance, fix policies and practices, and make workers whole after receiving a PAGA notice, as well as on employers that take action to comply with the Labor Code before receiving a PAGA notice.
- Expand higher penalties for employers who act maliciously, fraudulently, or oppressively or who are issued a finding or determination from any agency or court that their practice is unlawful.

(3) Promote making workers whole

- Require that an employer seeking to cure must come into compliance, pay all wages back with interest for previous three years, plus liquidated damages and reasonable attorney's fees.
- Expand which Labor Code sections can be cured to reduce the need for litigation and make employees whole quickly. Violations under Labor Code Section 2699.5 that are now curable: Section 226, Sections 226.7, 227, 227.3, 510, 512, 513, 1194, 1197, 1197.1, 2800, and 2802.
- Offer employers of less than 100 [employees] a new right to cure process through the Labor and Workforce Development Agency (LWDA).

- Create an early conference process after a case is filed where large employers can seek to cure violations or reach early settlement.
- Lower penalty where employer cures the violation to \$15, and if they took all reasonable steps to come into compliance before or after receiving a PAGA notice, there is no penalty.
- Simplify right to cure process for paystub violations to allow a summary document or a digital record while maintaining the right of a worker to request a copy.

(4) Improve outcomes

- Add injunctive relief so that workers can actually stop illegal practices.
- Change the split of PAGA penalties from 75% to state/25% to worker to 65% to state/35% to worker.
- Give courts additional discretion to increase or decrease penalties to prevent unjust outcomes.
- Codify that courts may limit the scope of claims presented at trial to ensure cases can be managed effectively.
- Allow courts to consolidate multiple, overlapping cases against the same employer.

(5) Make changes to standing

- Require the employee who files a PAGA case to have personally experienced violations of the same code sections as alleged in a claim.
- Preserve broader standing for non-profit legal services so that a worker need only have suffered one or more of the alleged violations.

(6) Reduce Penalties

- Create lower penalty for paystub violations where a worker was able to verify proper payment and employer.
- Create lower penalty for isolated violations that last for less than four pay periods.
- Limit derivative penalties for specified Code sections.
- Reduce penalties for employers who pay weekly to make the total owed equal to overall penalties paid by employers who pay biweekly.

(7) Strengthen state enforcement

- Give the Department of Industrial Relations (DIR) expedited hiring authority to fill vacancies at the Labor Commissioner and Cal/OSHA to improve enforcement.
- Preserve all existing authority and penalty levels for state agency enforcement.

The California Chamber of Commerce and various employer organizations write the following in support of AB 2288:

[. . .] **SB 92** and **AB 2288** will ensure that workers are having claims resolved more quickly and that businesses and non-profits that comply with the law are not penalized. Those reforms include:

Standing Reforms

- Supersedes holdings in *Huff* and *Johnson* decisions [citations omitted] by requiring an aggrieved employee to have personally suffered the alleged violations within the one-year statute of limitations.

Penalty Reforms

- Provides higher share of the civil penalty recovered to employees
- Caps the penalty for employers who have proactively taken steps to comply with the Labor Code
- Caps the penalty for employers who take proactive steps to be in compliance after receiving a PAGA notice
- Reduces the maximum penalty for a wage statement violation or a violation that was short in duration
- Addresses derivative claims
- Levels the playing field for employers who pay weekly by ensuring they are not penalized at a higher rate
- Specifies that the \$200 penalty only applies where a court or the agency issued a finding or determination against that employer or where the employer acted maliciously, fraudulently, or oppressively

Broadens Right to Cure

- Expands which Labor Code sections may be cured, so employees are made whole quickly
- Protects small employers by providing a more robust right to cure processes through the agency
- Provides an opportunity for early resolution in court

Judicial Discretion

- Codifies that the court may limit evidence presented or the scope of the claim to ensure the claim can be effectively tried

We are also supportive of efforts to give the California Department of Industrial Relations the ability to expedite hiring and fill vacancies to improve enforcement and implement the cure process for small employers.

The California Rural Legal Assistance Foundation writes that they are pleased that AB 2288 “preserved broad standing for farm worker clients” like theirs. They write the following in support of the bill:

On behalf of our farm worker clients, we write in support of AB 2288 (Kalra), as amended, and SB 92 (Umberg), as amended, which make changes to the Labor Code Private Attorneys General Act (PAGA). These changes were negotiated by the California Labor Federation with the California Chamber of Commerce and were aimed at incentivizing compliance and ensuring that workers are made whole for wage theft, among other things.

The CRLA Foundation co-sponsored PAGA with the Labor Federation in 2003 (SB 796; Dunn) in order to ensure that legal services organizations could adequately represent the largely undocumented farm labor force of the agricultural underground economy. Then, as now, many of these vulnerable farm workers were fearful of complaining about widespread labor law violations because of well-founded fears of being outed to INS/ICE, blacklisted from future work, and seeing their friends and associates (or family members) retaliated against.

PAGA's representative cause of action – allowing a single worker to act on behalf of herself and others who have been aggrieved by labor code violations – made it possible for State Bar IOLTA-funded qualified legal services projects and support centers (like the CRLA Foundation) to represent a single brave worker willing to come forward to try to remedy what were always workforce-wide violations involving all workers.

We and other rural legal services programs have made widespread and effective use of this broad PAGA standing provision since 2003. We have been able, often with the help of private counsel, to seek justice for tens of thousands of farm workers whose exploitation would have gone unremedied but for PAGA.

3. PAGA

PAGA was enacted in 2004 through legislation brought by then Chair of Senate Judiciary Committee, Senator Joe Dunn. (SB 796, Dunn, Ch. 906, Stats. 2003). Senator Dunn stated:

This bill is critical to the enforcement of worker's rights. California has some important worker protections in statute – some of the strongest in the nation. However, these laws are meaningless if they are not enforced. Workers must be able to seek redress against employers who break the law.

SB 796 established the "Labor Code Private Attorneys General Act of 2004." It was crafted to be an alternative "private attorney general" system for labor law enforcement that allowed employees to pursue civil penalties for labor law violations. PAGA established a civil penalty where one was not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and

\$200 for each aggrieved employee per pay period for subsequent violations. The penalty was \$500 per violation for a violator who is not an employer. PAGA specified that where the Agency or any of its subdivisions has discretion to assess civil penalties, a court could exercise the same discretion with respect to the civil penalties established by PAGA. The civil penalties did not apply if the alleged violation was a failure to act by the Agency or any of its subdivisions. PAGA authorized aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of themselves and other current or former employees against whom one or more of the alleged violations was committed. However, no private action could be maintained where the Agency or any of its subdivisions initiated proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code. PAGA defined an "aggrieved employee" as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed. PAGA specified that an employee would receive 25% of civil penalties recovered against a person that employs one or more employees. Civil penalties recovered against persons that did not employ one or more employees were to entirely go to the State. PAGA provided for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. PAGA also was not intended to affect the exclusive remedy provided by workers' compensation provisions of existing law.

As further explained by the Senate Labor Committee in their analysis for this bill:

Private Attorneys General Act of 2004:

Enacted in 2004 in response to a growing underground economy and the State's lack of staffing resources to adequately enforce Labor Code violations, PAGA authorizes an aggrieved employee to recover civil penalties normally assessed and collected by the [Agency] through a private right of action. PAGA authorizes individual workers to step into the role of the State's labor enforcement entity and bring a lawsuit against their employer on behalf of themselves, other employees, and the State of California for violations of the Labor Code.

Under PAGA, an aggrieved employee must file a notice with the [Agency] detailing Labor Code violations and, depending on the violations alleged, the [Agency] and/or responsible division within the [Department of Industrial Relations] must act within set time limits. Failure to do so permits the employee to proceed with a PAGA lawsuit. Lawsuits under PAGA proceed only after the State declines to investigate or if the investigation does not lead to a citation. PAGA provisions limit an aggrieved employee's recovery of remedies to a civil penalty; they are not authorized to collect damages or back pay, nor are they entitled to seek injunctive relief. Civil penalties recovered through a PAGA action are split between the employees and the State, with the [Agency] receiving 75 percent of the amount and the employee bringing the action receiving 25 percent as well as attorney's fees and costs.

Civil penalties recovered and directed to the [Agency] must be used for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code. According to the Legislative Analyst's Office, the state receives around 5,000 PAGA notices annually.²

4. What AB 2288 (Kalra) does

This bill preserves PAGA as a vehicle for an employee to bring a representative action for civil penalties to enforce the Labor Code even where the employee has signed an arbitration agreement that would otherwise prevent the employee from pursuing such claims in any forum. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), the California Supreme Court held PAGA claims are unwaivable and that an arbitration agreement requiring an employee as a condition of employment to forfeit the right to pursue a representative PAGA action in any forum is contrary to public policy and unenforceable. AB 2288 does not impact this holding. It will remain the case, after AB 2288 is signed into law, that contractual waivers of the right to pursue representative PAGA actions are void. It will also remain the case, as the Supreme Court held in *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023), that an aggrieved employee does not lose standing to pursue the individual and non-individual components of that employee's representative PAGA claim on behalf of the Agency and other employees even if an arbitration agreement or other contract requires the employee to pursue those otherwise integrated components of the employee's PAGA claim in separate forums.

The bill limits standing for PAGA plaintiffs to where the employee personally suffered a violation of the same code section as those alleged for other employees. AB 2288 preserves standing for an employee represented by a non-profit legal aid, including a qualified legal services project or a qualified support center, who suffered one or more of the violations alleged. The non-profit must have 5 years of pursuing civil actions and must be a counsel of record. The bill defines what constitutes a "cure" under the new Agency process, new early conference process, and existing 226 cure. The definition of cure and the reduced penalty for cured violations are limited to the cure process and timelines provided in the bill for either the Agency process or the early evaluation conference process. The bill adds a new remedy of injunctive relief to stop illegal practices and order appropriate relief to remedy violations. The bill creates new reduced penalty tiers of \$25 and \$50 for paystub violations where a worker can still determine that they were paid properly and what grower contracted with the Farm Labor Contractor and for isolated violations that last less than 30 days or 4 pay periods, whichever is less. The bill creates two ways to reach higher penalty tier: employer engaged who act maliciously, fraudulently or oppressively or who are issued a finding

² <https://oag.ca.gov/system/files/initiatives/pdfs/fiscal-impact-estimate-report%2821-0027A1%29.pdf>

or determination from any agency or court that their practice is unlawful. The bill creates a lower penalty for employers who take “all reasonable steps” to come into compliance pre-PAGA notice (15%) or post-PAGA notice (30%) but expressly provides judicial discretion to go above or below the cap to avoid an unjust outcome. The bill limits derivative claims under specified provisions, but excludes willful violations of 204 and knowing violations of 226. The bill reduces penalties by half for companies that pay weekly because currently companies that pay weekly pay twice as many penalties since PAGA penalties are by pay period. Lastly, the bill gives workers a slightly higher share of civil penalties from 25% to 35%, reducing the Agency share from 75% to 65%.

5. SB 92 (Umberg, 2024) needs to be implemented in order for AB 2288 to take effect

As explained in Comment 1, this bill is part of a deal of PAGA reform that was negotiated by stakeholders. The impetus for this bill is a ballot initiative that would have amended PAGA if the voters were to approve the initiative. That initiative was scheduled to be voted on during the November 2024 election; however, the proponents of the initiative have agreed to withdraw the initiative when AB 2288 and SB 92 are signed into law.

In broad strokes, SB 92 (Umberg), among other things, authorizes, on or after October 1, 2024, an employer that employed fewer than 100 employees in total during the period covered by the required notice to, within 33 days of receipt of the notice submit to the Agency a confidential proposal to cure one or more of the alleged violations and, upon completing the cure, provide a sworn notification to the employee and agency that the cure is completed, as prescribed. The bill requires the Agency to verify whether the cure is complete within 20 days of receiving the employer’s notification, as specified. This bill also authorizes an employer who employed at least 100 employees in total during the period covered by the required notice to, upon being served with a summons and complaint asserting a claim under PAGA, file a request and participate in, as prescribed, an early evaluation conference in the proceedings of the claim and a request for a stay of court proceedings before, or simultaneous with, that defendant’s responsive pleading or other initial appearance in the action that includes the claim. SB 92 applies its provisions to civil actions brought on or after June 19, 2024, except as specified.

SB 92 is expected to be heard in the Assembly Judiciary Committee on the same day as AB 2288 is heard.

SUPPORT

California Chamber of Commerce
California Labor Federation, AFL-CIO
Acclamation Insurance Management Services
African American Farmers of California

Agricultural Council of California
Airlines for America
Allied Managed Care
American Federation of State, County, & Municipal Employees, California
American Petroleum and Convenience Store Association
Associated Equipment Distributors
Associated General Contractors
Bay Area Council
California Agricultural Aircraft Association
California Alliance for Retired Americans
California Alliance of Family Owned Businesses
California Apartment Association
California Association of Licensed Security Agencies, Guards & Associates
California Association of Sheet Metal and Air Conditioning Contractors National
Association
California Association of Winegrowers
California Beer and Beverage Distributors
California Building Industry Association
California Citrus Mutual
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Cotton Ginners and Growers Association
California Credit Unions League
California Employment Lawyers
California Federation of Teachers
California IATSE Council
California Nurses Association
California Professional Firefighters
California Rural Legal Assistance Foundation
California State University Employees Union, SEIU, Local 2579
California Teamsters Public Affairs Council
California Farm Bureau
California Fresh Fruit Association
California Grocers Association
California Hispanic Chambers of Commerce
California Manufacturers & Technology Association
California Mortgage Bankers Association
California New Car Dealers Association
California Restaurant Association
California Retailers Association
California Rice Commission
California Rural Legal Assistance Foundation
California Travel Association
California Truckers Association
California Walnut Commission

CFT, AFT, AFL-CIO
Chino Valley Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Consumer Attorneys of California
Corona Chamber of Commerce
Engineers & Scientists of California, IFPTE, Local 20
Flasher Barricade Association
Folsom Chamber of Commerce
Fresno Chamber of Commerce of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Grower-Shipper Association of Central California
Housing Contractors of California
Industry Business Council
LeadingAge California
National Association of Theater Owners of California
Nisei Farmers League
North San Diego Business Chamber
Palos Verdes Peninsula Chamber of Commerce
Rancho Cordova Chamber of Commerce
Rancho Mirage Chamber of Commerce
Sacramento Metro Chamber of Commerce
San Diego Regional Chamber of Commerce
San Jose Chamber of Commerce
San Marcos Chamber of Commerce
Santa Maria Valley Chamber of Commerce
SEIU, California State Council
Simi Valley Chamber of Commerce
SMART - Transportation Division
Torrance Area Chamber of Commerce
True Blue
United Ag
UNITE HERE!
United Auto Workers
United Food & Commercial Workers, Western State Council
Utility Workers Union of America
Vista Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Carwash Association
Western Growers Association
Wine Institute

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 92 (Umberg, 2024) *see* Comment 5, above. SB 92 is expected to be heard in the Assembly Judiciary Committee on the same day as AB 2288.

Prior Legislation:

AB 594 (Maienschein, Ch. 659, Stats. 2023) until January 1, 2029, clarified and expanded public prosecutors' authority to enforce the violation of specified labor laws through civil or criminal actions without specific authorization from the DLSE. Clarified who has this authority, that the authority is limited to the prosecutor's geographic jurisdiction, except as specified, and made other changes relating to enforcement of employee misclassification violations.

SB 836 (Committee on Budget and Fiscal Review, Ch. 31, Stats. 2016) made various revisions to PAGA. Included a \$75 filing fee for new case notices and any employer response to such notice, and requires online filing and transmission of all items submitted to the Labor Workforce Development Agency. This bill also requires a copy of a proposed settlement to be submitted to the Agency at the same that it is submitted to court, and requires parties to provide the Agency with a copy of the court's judgement. This bill also extends various time lines, including the time the Agency reviews new cases from 30 to 60 days, the time for the Agency to notify parties of intent to investigate violation from 33 to 65 days, and provides the Agency with the option to send notice to extend the 120 day time limit for investigating and citing the employer by an additional 60 days. This bill sunsets the 60 day extension provision on July 1, 2021.

SB 796 (Dunn, Ch. 906, Stats. 2003) enacted the Labor Code Private Attorneys General Act of 2004 established an alternative private attorney general system for labor law enforcement that allowed employees to pursue civil penalties for employment law violations.

AB 2985 (Committee on Labor and Private Employment, Ch. 662, Stats. 2002) required the Labor and Workforce Development Agency to contract with independent research organization to study the most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement. The study needed to be submitted to the Legislature by December 31, 2003.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)

Assembly Floor (Ayes 44, Noes 21)

Assembly Appropriations Committee (Ayes 10, Noes 3)

Assembly Judiciary Committee (Ayes 7, Noes 2)
