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## HAS PAGA MET ITS FINAL MATCH? CONTINUED EXPANSION OF CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT LEADS TO TRADE GROUP'S CONSTITUTIONAL CHALLENGE

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**HAS PAGA MET ITS FINAL MATCH? CONTINUED  
EXPANSION OF CALIFORNIA’S PRIVATE  
ATTORNEYS GENERAL ACT LEADS TO TRADE  
GROUP’S CONSTITUTIONAL CHALLENGE**

*Ivan Muñoz\**

*In 2003, California enacted the Private Attorneys General Act (“PAGA”) in response to its inability to enforce its labor code amid rapid expansion of its workforce. What was traditionally a responsibility of the Attorney General, private plaintiffs could now sue their employers for alleged violations of the labor code. The law was received with much controversy, and to this day, there are growing concerns that it has become an extortion mechanism for plaintiffs at the expense of the business community.*

*This Note traces the historical development of the law by investigating its expansion in both the legislature and judiciary. Further, this Note uses *CABIA v. Xavier Becerra*, a case that alleges PAGA is unconstitutional both under state and federal law, as a framework by which to consider and analyze the law’s future. This Note proposes that there is a need for greater judicial oversight in PAGA lawsuits—particularly so in the settlement phase, where oftentimes plaintiff’s attorneys use PAGA claims as a tool to leverage large settlements. The current statutory requirement of court approval of PAGA settlements is insufficient and in need of greater scrutiny if California is to fulfill the legislative purpose that justified PAGA—greater protection for a growing workforce.*

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\* Editor-in-Chief, SANTA CLARA LAW REVIEW, Volume 60. J.D. Candidate, Santa Clara University School of Law, 2020. I am forever grateful for my friends and colleagues of SANTA CLARA LAW REVIEW. Special thanks to Jose Macias and Hector Rodriguez of Macias Rodriguez LLP, for mentoring me and being a source of inspiration. Lastly, I would like to thank Professor E. Gary Spitko, the entire faculty at Santa Clara Law and my family for their unconditional support.

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## I. INTRODUCTION

In 2003, the California Legislature enacted the Private Attorneys General Act ("PAGA"), in response to the concern that the Labor and Workforce Development Agency ("LWDA") was not properly enforcing the state labor code.<sup>1</sup> The legislature believed the LWDA was restricted by budgetary constraints, low-staffing levels, and a growing workforce.<sup>2</sup> To overcome these restrictions, the legislature deputized aggrieved employees to allow them to bring actions on behalf of the state.<sup>3</sup> Through PAGA, California effectively authorized aggrieved employees to act as private attorney generals to sue their employers to enforce the labor code.<sup>4</sup> A PAGA action is a quasi-*qui tam*<sup>5</sup> action providing the state with 75% of the proceeds and 25% to the aggrieved employee.<sup>6</sup>

From its initial enactment to present-day construction, PAGA lawsuits have grown at an exponential rate. During the first year when the law took effect, fiscal year 2004-2005, the state collected \$20,900 in PAGA penalties.<sup>7</sup> By fiscal year 2017-2018 that number rose to \$34,640,059.<sup>8</sup>

Courts have consistently eroded employers' ability to defend against PAGA litigation.<sup>9</sup> The California judiciary has expanded the law's scope through decisions such as *Arias v. Superior Court*,<sup>10</sup> *Iskanian v. CLS Transportation Los Angeles, LLC*,<sup>11</sup> and *Huff v. Securitas Security Services USA, Inc.*<sup>12</sup> *Arias* removes the class action requirement

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1. Matthew J. Goodman, *The Private Attorney General Act: How to Manage the Unmanageable*, 56 SANTA CLARA L. REV. 413, 417-18 (2016).

2. *Id.* at 418.

3. *Id.*

4. *Id.*

5. *Qui Tam Action*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining a *qui tam* action as "[a]n action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive").

6. See Goodman, *supra* note 1, at 418.

7. E-mail from the "DIR PAGAInfo," to author (Jan. 15, 2019, 08:53 PST) (on file with author) [hereinafter 2019 DIR PAGAInfo Email]; see also *infra* Figure 1. This chart was provided by the California Department of Industrial Relations. For more information, contact PAGAInfo@dir.ca.gov.

8. See *infra* Figure 1.

9. *But see* ZB, N.A. v. Superior Court, 8 Cal. 5th 175, 198 (2019) (holding that a PAGA plaintiff is eligible to recover only a fixed penalty amount per pay period and does not include an unpaid wage claim under the California Labor Code section 558).

10. 46 Cal. 4th 969 (2009).

11. 59 Cal. 4th 348 (2014).

12. 23 Cal. App. 5th 745 (2018), *reh'g denied* (June 13, 2018), *review denied* (Aug. 8, 2018); see also *Kim v. Reins Int'l California, Inc.*, 9 Cal. 5th 73 (2020) (holding that an employee does not lose standing to pursue a PAGA claim after settling individual claims).

for PAGA.<sup>13</sup> *Iskanian* precludes a PAGA representative action from being waived by a pre-employment agreement.<sup>14</sup> *Huff* establishes that an employee aggrieved of at least one labor code violation may pursue any and all labor code violations committed by the employer, regardless of whether those additional violations harmed the plaintiff-employee.<sup>15</sup>

On November 28, 2018, however, the California Business & Industrial Alliance (“CABIA”), an organization advocating on behalf of the California business community, sued California Attorney General, Xavier Becerra, challenging PAGA’s constitutionality.<sup>16</sup> The case was in litigation at the time of writing this Note.<sup>17</sup>

CABIA received its first win in March 2019 when the court denied Attorney General Xavier Becerra’s attempt to dismiss the case.<sup>18</sup> In September 2019, however, the court ruled against CABIA, by narrowing the scope of the lawsuit, finding that CABIA failed to show how PAGA violates the separation of powers doctrine and due process rights.<sup>19</sup> In rejecting CABIA’s separation of powers claim, the court ruled it is bound by the ruling in *Iskanian*, which held that PAGA does not violate separation of powers laws in the California Constitution.<sup>20</sup> It is uncertain how CABIA’s judicial challenge to PAGA’s constitutionality will continue unfolding, but a challenging course lies ahead for the organization.<sup>21</sup>

This Note will first provide a historical account of the difficulties the state faced in enforcing the labor code prior to PAGA. The Note will

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13. *Arias*, 46 Cal. 4th at 975.

14. *Iskanian*, 59 Cal. 4th at 383; *see also* *Correia v. NB Baker Elec., Inc.*, 32 Cal. App. 5th 602, 624-25 (2019) (holding that employers may not compel arbitration of PAGA claims through arbitration agreements without the state’s consent).

15. *Huff*, 23 Cal. App. 5th at 751 (2018).

16. *See generally* Complaint for Injunctive and Declaratory Relief at 2, *Cal. Bus. & Indus. All. v. Becerra*, No. 30-2018-01035180-CV-JR-CXC (Orange Cty. Super. Ct. Nov. 28, 2018) [hereinafter CABIA Complaint].

17. *See generally* Docket, *Cal. Bus. & Indus. All.*, No. 30-2018-01035180-CV-JR-CXC.

18. Bianca Bruno, *Business Trade Group Wins First Battle Against California Labor Law*, COURTHOUSE NEWS SERV. (Mar. 28, 2019), <https://www.courthousenews.com/business-trade-group-wins-first-battle-against-california-labor-law/>.

19. Martin Macias Jr., *Judge Narrows Scope of California Labor Law Challenge*, COURTHOUSE NEWS SERV. (Sept. 11, 2019), <https://www.courthousenews.com/judge-narrows-scope-of-california-labor-law-challenge/>.

20. *Id.*

21. *See generally* Defendant’s Notice of Motion and Motion for Summary Judgment, *Cal. Bus. & Indus. All.*, No. 30-2018-01035180-CV-JR-CXC (on November 21, 2019, Attorney General Xavier Becerra filed a Motion for Summary Judgment. At the time this Note was written, the motion was pending before the court. Defendants argue the claims under the United States Constitution and California Constitution are without merit because the claims are governed by a rational basis standard of review and PAGA is rationally related to a legitimate state purpose); Summary Adjudication, *Cal. Bus. & Indus. All.*, No. 30-2018-01035180-CV-JR-CXC.

trace PAGA's initial implementation and subsequent expansion through the California Legislature, through its present-day reality. It will highlight how the amendments were necessary because the law was unsuccessful in achieving the purpose that led to its initial enactment. In a parallel fashion, the Note will examine PAGA in the judiciary through analysis of key decisions and more recent rulings. It will use the *CABIA* litigation as a framework by which to analyze the future of the law and will propose three solutions to deal with PAGA's inability to achieve the legislative purpose that led to its enactment.

## II. HISTORICAL OVERVIEW OF PAGA

### A. California's Labor Code Enforcement Problem Prior to PAGA

The California State Assembly Committee on Labor and Employment held hearings in 2001 regarding the state's effectiveness and efficiency of enforcing its wage and hour laws.<sup>22</sup> At the time of the hearings, the Department of Industrial Relations ("DIR") consisted of a staff of over 460 workers, making it the largest state labor law enforcement organization in the country.<sup>23</sup> The Committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the Division of Labor Standards Enforcement ("DLSE")—a sub-agency of the DIR.<sup>24</sup> However, despite its size and funding, the committee found that the DIR was not effectively holding employers accountable for labor law violations.<sup>25</sup>

The Los Angeles garment industry exemplifies the failure of the DIR. A U.S. Department of Labor Study of the garment industry in Los Angeles, which employed more than 100,000 workers, estimated over 33,000 ongoing wage violations.<sup>26</sup> The DIR, however, was issuing fewer than 100 wage citations per year, for all industries throughout the state.<sup>27</sup>

The DIR's failure to fully enforce labor laws implicated a loss of income generating tax money that would be paid to the state.<sup>28</sup> For example, the DIR failed to enforce labor laws in California's "underground economy"—businesses operating outside the state's tax and licensing requirements— that estimates to gross from \$60 billion to \$140 billion a

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22. *Assembly Committee on Labor and Employment: Hearing on S.B. 796*, 2003-04 Reg. Sess., 3 (Cal. July 9, 2003) [hereinafter ACLE SB 796 Hearing].

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. ACLE SB 796 Hearing, *supra* note 22, at 3.

year.<sup>29</sup> Annually, this meant California's underground economy underreported, or failed to report altogether, income-generating activity, causing the state to lose out on \$3 billion to \$6 billion of taxable money because the DIR failed to enforce labor laws.<sup>30</sup>

Prior to PAGA, the resources of enforcement agencies were disproportionate to the market they were to police. Collectively, California's enforcement agencies were responsible for protecting the legal rights of over seventeen million workers and regulating almost 800,000 private establishments—in addition to the public sector workplace.<sup>31</sup> Between 1980 and 2000, California's workforce grew 48%; however, at that same time, resources available to the labor enforcement divisions remained below levels available in the mid-1980s.<sup>32</sup> During this twenty-year timespan, the DLSE's budgetary resources increased only 27%.<sup>33</sup>

In addition to low staffing and resource levels, another issue with enforcing the labor code was that many violations were punishable only as criminal misdemeanors with no civil penalties available.<sup>34</sup> Due to the lack of resources, district attorneys naturally directed their time to violent crimes and other public priorities.<sup>35</sup> As a result, labor code violations rarely resulted in criminal investigations and prosecutions, meaning employers were seldomly held accountable for violating the labor code.<sup>36</sup>

Conflicted by low staffing levels, budgetary constraints, and an increasing labor force, the California Legislature proposed what it perceived to be a solution—Senate Bill 796 (“SB 796”).<sup>37</sup> Referred to as the Labor Code Private Attorneys General Act of 2004 (PAGA), SB 796 sought to expand assessing and collecting civil penalties for labor code violations, which under existing law, was only enforceable by the LWDA.<sup>38</sup>

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29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 3-4.

33. *Id.* at 4.

34. ACLE SB 796 Hearing, *supra* note 22, at 4.

35. *Id.*

36. *Id.*

37. *Assembly Committee on Appropriations: Hearing on S.B. 796*, 2003-04 Reg. Sess., 2 (Cal. Aug. 20, 2003).

38. See An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment, S.B. 796 – Legis. Counsel's Digest, 2003-04 Sess., 1 (Cal. Feb. 21, 2003), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200320040SB796](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB796) [hereinafter Legislative Counsel's Digest].

*B. PAGA: From Bill to Enactment*

The proposed PAGA bill would allow aggrieved employees to bring civil actions that financially penalize employers for violations of the labor code if the LWDA itself chose not to investigate.<sup>39</sup> The purpose of PAGA was not to benefit aggrieved employees by recovering damages or obtaining restitution, but rather to create a means of “deputizing” citizens as private attorneys general to enforce the labor code.<sup>40</sup> Accordingly, the statute is designed for the benefit of the general public, not the aggrieved employee.<sup>41</sup>

Penalties collected in these actions would typically be distributed 50% to the General Fund, 25% to the LWDA for education, and 25% to the aggrieved employee.<sup>42</sup> The Labor and Workforce Development Fund would receive the LWDA portion from a PAGA case to be used for enforcement of labor laws, as well as to provide education to employers and employees about their rights and responsibilities under the labor code.<sup>43</sup> In addition, an aggrieved employee could recover reasonable attorney’s fees and costs—and if applicable—penalties.<sup>44</sup>

The California State Assembly passed the PAGA bill on September 11, 2003, by a margin of one vote above the minimum required to pass a regular bill.<sup>45</sup> Similarly, the California State Senate passed the PAGA bill by the minimum number of votes necessary for a regular bill—twenty-one.<sup>46</sup> Governor Gray Davis signed the PAGA bill on October 12, 2003, five days after the California electorate voted to recall him from office.<sup>47</sup> The bill took effect on January 1, 2004.<sup>48</sup>

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39. *Id.*

40. *Huff*, 23 Cal. App. 5th at 753; Ben Nicholson, *Businesses Beware: Chapter 906 Deputizes 17 Million Private Attorneys General to Enforce the Labor Code*, MCGEORGE L. REV. 581, 584 (2004) (citing Letter from Tom Rankin, President, California Labor Federation, to Assembly member Ellen Corbet, Chairperson, Assembly Judiciary Committee (June 25, 2003) (on file with McGeorge Law Review)).

41. *Huff*, 23 Cal. App. 5th at 753.

42. Legislative Counsel’s Digest, *supra* note 38, at 1.

43. *The 2016-17 Budget: Labor Code Private Attorneys General Act Resources*, LEGIS. ANALYST’S OFF. (Mar. 25, 2016), <https://lao.ca.gov/Publications/Report/3403>.

44. Legislative Counsel’s Digest, *supra* note 38, at 1.

45. CABIA Complaint, *supra* note 16, at 17.

46. *Id.*

47. *Id.*

48. Anthony J. Oncidi & Robert A. Escalante, *California Private Attorneys General Act (PAGA): Overview*, PRAC. L. 3 (Dec. 2017), [https://content.next.westlaw.com/w-001-1283?transitionType=Default&contextData=\(sc.Default\)&\\_\\_lrTS=20171119115105553&firstPage=true&bhcp=1](https://content.next.westlaw.com/w-001-1283?transitionType=Default&contextData=(sc.Default)&__lrTS=20171119115105553&firstPage=true&bhcp=1).



### C. Support/Opposition to PAGA

Proponents of the bill included the California Labor Federation, the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”), and the California Rural Legal Assistance Foundation (“CRLAF”).<sup>49</sup> Proponents noted the bill would address inadequacies in labor law enforcement and would generate revenue by assigning nominal civil penalties to provisions of the labor code.<sup>50</sup> The proponents further argued that inadequate staffing levels and the continued growth of California’s labor force warranted creative solutions that would help the state crack down on labor law violators.<sup>51</sup> PAGA proposed to deputize California’s workforce to allow aggrieved employees to recover civil penalties for employer violations of the labor code.<sup>52</sup>

Critics, however, argued the bill’s detrimental impact on California employers outweighed the benefit to employees.<sup>53</sup> Employer groups, such as the California Chamber of Commerce, argued it was unfair that employees were entitled to attorney’s fees and costs if they prevailed in their action, yet similar attorney’s fees and costs were not available for prevailing employers.<sup>54</sup> Further, critics argued the bill would “encourage private attorneys to ‘act as vigilantes’ [in] pursuing frivolous violations on behalf of different employees.”<sup>55</sup> Finally, critics expressed frustration that there were no requirements—such as a preliminary claim filing with the Labor Commissioner—for employees to satisfy prior to pursuing a PAGA claim.<sup>56</sup>

### D. Repeal Efforts and Amendments

Opponents worked to repeal PAGA as soon as it was enacted.<sup>57</sup> These efforts, however, were unsuccessful.<sup>58</sup> Instead, just months after PAGA’s enactment, the first iteration of PAGA was significantly amended by Senate Bill 1809 (“SB 1809”),<sup>59</sup> followed by Assembly Bill

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49. See ACLE SB 796 Hearing, *supra* note 22, at 4.

50. *Id.*

51. *Id.* at 5.

52. See Legislative Counsel’s Digest, *supra* note 38, at 2.

53. See ACLE SB 796 Hearing, *supra* note 22, at 5.

54. *Id.*

55. *Id.*

56. *Id.*

57. See Chris Micheli, *Private Attorneys General Act Lawsuits in California: A Review of PAGA and Proposals for Reforming the “Sue Your Boss” Law*, 49 U. PAC. L. REV. 265, 268 (2017).

58. See *id.*

59. An act to amend Sections 98.6 and 2699 of, to add Sections 2699.3 and 2699.5 to, and to repeal Section 431 of the Labor Code, relating to private employment, making an appropriation therefore, and declaring the urgency thereof, to take effect immediately, S.B. 1809

1506 (“AB 1506”),<sup>60</sup> Senate Bill 836 (“SB 836”),<sup>61</sup> and Assembly Bill 1654 (“AB 1654”).<sup>62</sup>

### 1. Senate Bill 1809 (SB 1809)

Senator Joseph Dunn introduced SB 1809 as an urgency statute, and Governor Arnold Schwarzenegger signed the bill into law on August 11, 2004.<sup>63</sup> The statute’s amendment provisions retroactively applied to cases filed after January 1, 2004, to provide relief to employers who may have been adversely affected by frivolous PAGA lawsuits.<sup>64</sup> SB 1809 established that as a precondition to bringing a civil action under PAGA, an aggrieved employee would have to comply with specified procedural and administrative requirements, including giving written notice to the LWDA and the employer.<sup>65</sup> Further, for any PAGA action, SB 1809 afforded courts a new ability to award less than the maximum civil penalty amount specified by the underlying applicable statute.<sup>66</sup> This amended provision, by allowing judicial discretion of penalty assessment, reduced the probability that insignificant or inadvertent violations could lead to astronomical penalties.<sup>67</sup> Additionally, SB 1809 required courts to review and authorize any settlement agreement.<sup>68</sup>

In addition to the procedural and administrative requirements, SB 1809 eliminated employee recovery based on an employer’s violation of

– Legis. Counsel’s Digest, 2003-04 Sess. (Cal. Aug. 11, 2004), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200320040SB1809](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB1809).

60. An act to amend Sections 2699, 2699.3, and 2699.5 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately, Assemb. B. 1506 – Legis. Counsel’s Digest, 2003-04 Sess. (Cal. Oct. 2, 2015), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1506](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1506).

61. An act relating to the Budget Act of 2016, S.B. 836 – Legis. Counsel’s Digest, 2015-16 Sess., at subdiv. 26 (Cal. June 27, 2016), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB836](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB836); see also *Private Attorneys General Act (PAGA)*, LAB. & WORKFORCE DEV. AGENCY, <https://www.labor.ca.gov/resources/paga/> (last visited Apr. 28, 2020).

62. An act to add and repeal Section 2699.6 of the Labor Code, relating to employment, Assemb. B. 1654 – Legis. Counsel’s Digest, 2017-18 Sess. (Cal. Sept. 19, 2018), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1654](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1654); see also CABIA Complaint, *supra* note 16, at 17-18.

63. Leonora M. Schloss & Cari A. Cohorn, *Assessing the Amended Labor Code Private Attorneys General Act*, 28 L.A. LAW. 13, 14 (Feb. 2006).

64. See An act to amend Section 1194.2 of the Labor Code, relating to employees, S.B. 1809 – Legis. Counsel’s Digest, 2003-04 Sess., §§ 6, 10 (Cal. Feb. 20, 2004), [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200320040SB1809](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB1809).

65. *Id.* § 4(a)(1).

66. *Id.* § 3(e)(2).

67. See Micheli, *supra* note 57, at 269 (citing CAL. LAB. CODE § 2699 (amended by Chapter 221)) (explaining that SB 1809 “authorizes courts to award a lesser amount if ‘to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory’”).

68. Cal. S.B. 1809 – Legis. Counsel’s Digest §§ 3(l), 4(b)(4).

most posting or notice requirements of the labor code.<sup>69</sup> Instead, an action for a violation of a posting or notice requirement would be allowed only if it related to an employer's failure to communicate information regarding mandatory payroll or workplace injuries.<sup>70</sup> This change significantly decreased an employer's liability, as causes of action based on notice posting requirements were dismissed and could no longer be raised.<sup>71</sup>

2. *Recent reforms—Assembly Bill 1506 (AB 1506) and Senate Bill 836 (SB 836)*

SB 1809 provided the PAGA framework for many years. However, in 2015, Governor Jerry Brown amended several PAGA provisions through AB 1506.<sup>72</sup> AB 1506 removed an employer's failure to include the period of performance and employer's name and address in the wage statement from PAGA's enumerated list of serious violations.<sup>73</sup> Further, the amendment required aggrieved employees to provide notice of the alleged violation and provided employers a period to cure the violation.<sup>74</sup>

Proponents, noting PAGA lawsuits increased over 400% between 2005 and 2013, argued the bill would help curb frivolous litigation with respect to Cal. Lab. Code sections 226(a)(6) and 226(a)(8) by granting an employer thirty-three days to cure an alleged violation.<sup>75</sup> If the employer failed to cure the violation, the employee would be able to file a civil action and obtain any unpaid wages, penalties, and attorney's fees.<sup>76</sup> Proponents argued AB 1506 would "provide the appropriate balance of allowing an employer to correct unintentional errors without the threat of a multi-million dollar lawsuit that could put the employer out of business, while still protecting the employee's ability to obtain accurate information."<sup>77</sup>

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69. *Id.* § 3(g)(2).

70. *Id.*

71. See Micheli, *supra* note 57, at 269; see also Cal. S.B. 1809 – Legis. Counsel's Digest § 6(a).

72. Micheli, *supra* note 57, at 278; An act to amend Sections 2699, 2699.3, and 2699.5 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately, Assemb. B. 1506 – Legis. Counsel's Digest, 2003-04 Sess. (Cal. Oct. 2, 2015), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1506](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1506).

73. See STATE OF CAL. ASSEMBLY FLOOR ANALYSIS, Assemb. B. 1506, 2015-16 Sess., at 1 (Sept. 2, 2015).

74. *Id.*

75. *Id.* at 3; see also CAL. LAB. CODE § 226(a)(6) (West 2019) (requiring the inclusive dates of the pay period) and § 226(a)(8) (addressing an employer's legal name and address).

76. STATE OF CAL. ASSEMBLY FLOOR ANALYSIS, Assemb. B. 1506, 2015-16 Sess., at 3 (Sept. 2, 2015).

77. *Id.*

In 2016, Governor Jerry Brown sought further reform of PAGA through SB 836, which would shift the handling of cases from courts to agencies. Governor Brown's 2016 budget proposal highlighted the high volume of PAGA cases and noted that less than 1% of cases were being reviewed or investigated due to a lack of resources.<sup>78</sup> SB 836 declared that the intent of the legislature was for the LWDA to continue to assign duties prescribed by PAGA to the respective departments and agencies where those duties were customarily performed.<sup>79</sup> In a statement regarding the proposed legislation, Governor Jerry Brown recognized the litigious nature of PAGA filings: "[t]he administration is committed to reducing unnecessary litigation and lowering the costs of doing business in California to support a thriving economic environment. Given the scope and frequency of PAGA filings, there is great opportunity to increase the rate of administrative handling of cases versus the courts."<sup>80</sup>

SB 836 implemented procedural reforms and limitations. The bill mandated online PAGA filings and transmission of all items submitted to the LWDA, as well as a \$75 filing fee for new case notices.<sup>81</sup> More importantly, the modification extended the LWDA's investigative period of new cases from thirty to sixty days.<sup>82</sup> The LWDA would also have sixty-five days to notify the parties to an action of its intent to investigate a violation, as opposed to the previous thirty-three days.<sup>83</sup> As a result, SB 836 prohibited plaintiffs from commencing a PAGA action until sixty-five days after sending notice to the LWDA.<sup>84</sup> The agency could also extend the time to complete an investigation by sixty days,

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78. STATE OF CAL. DEP'T OF FIN., BUDGET CHANGE PROPOSAL, Private Attorneys General Act (PAGA), 2016/17 Fiscal Year, at 1 n.1 (Jan. 7, 2016), [http://web1a.esd.dof.ca.gov/Documents/bcp/1617/FY1617\\_ORG7350\\_BCP474.pdf](http://web1a.esd.dof.ca.gov/Documents/bcp/1617/FY1617_ORG7350_BCP474.pdf) [hereinafter Brown 2016/17 Budget Proposal]; see also David B. Smith, *What Can Brown Do for PAGA? Budget Proposal Seeks Greater Oversight of PAGA Claims*, ORRICK BLOGS—EMP. L. & LITIG. (Jan. 26, 2016), <https://blogs.orrick.com/employment/2016/01/26/what-can-brown-do-for-paga-budget-proposal-seeks-greater-oversight-of-paga-claims/>; Micheli, *supra* note 57, at 277.

79. An act relating to the Budget Act of 2016, S.B. 836 – Legis. Counsel's Digest, 2015-16 Sess., § 188 (Cal. June 27, 2016), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB836](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB836).

80. Brown 2016/17 Budget Proposal, *supra* note 78, at 3 (Analysis of the Problem: State Level Considerations); see also Tim L. Johnson, *California PAGA Amendments Will Expand Labor Officials' Involvement in PAGA Claims*, OGLETREE DEAKINS (June 23, 2016), <https://ogletree.com/insights/2016-06-23/california-paga-amendments-will-expand-labor-officials-involvement-in-paga-claims/>.

81. See Micheli, *supra* note 57, at 277.

82. *Id.* at 278.

83. *Id.*

84. *Id.*

with notice, when necessary.<sup>85</sup> Moreover, if applicable, PAGA cure notices for employers were now filed online with the LWDA.<sup>86</sup> Upon a case's conclusion, SB 836 requires employees to submit a copy of a proposed settlement to the LWDA, at the same time it is filed for court approval.<sup>87</sup>

### 3. *Assembly Bill 1654 (AB 1654): Construction Industry Exempted from PAGA*

The most recent modification to PAGA came in 2018, under AB 1654.<sup>88</sup> Construction workers are now exempt from PAGA if they are covered by a collective bargaining agreement that expressly provides for—among other things—a grievance and binding arbitration procedure to redress violations that would have been remedied under PAGA.<sup>89</sup> However, for this exemption to apply, the collective bargaining agreement must waive the requirements of PAGA in clear and unambiguous terms, and it must authorize an arbitrator to award all remedies available under PAGA, except any awards or penalties that would be payable to the LWDA.<sup>90</sup>

## III. PAGA'S EXPANSION THROUGH THE JUDICIARY

Despite legislative efforts, California courts continue to expand PAGA's reach.

### A. *An Aggrieved Employee Does Not Have to Satisfy Class Action Requirements as PAGA Is a "Representative Action" Raised as a Law Enforcement Mechanism (Arias v. Superior Court)*

In *Arias v. Superior Court*, the plaintiff alleged under PAGA that defendant employer violated the labor code by failing to provide

85. *Id.* Currently, this sixty day extension portion of the bill has a running effect until July 1, 2021, but the Legislature could extend it further. *Id.*; see also An act relating to the Budget Act of 2016, S.B. 836 – Legis. Counsel's Digest, 2015-16 Sess., at 12 (Cal. June 27, 2016), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB836](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB836).

86. See Micheli, *supra* note 57, at 278.

87. *Id.* at 277.

88. LAB. § 2699.6; see also STATE OF CAL. ASSEMB. COMM. ON LABOR AND EMP'T, Assemb. B. 1654, 2017-18 Sess. at 1 (Aug. 31, 2018).

89. LAB. § 2699.6; see also An act to add and repeal Section 2699.6 of the Labor Code, relating to employment, Assemb. B. 1654 – Legis. Counsel's Digest, 2017-18 Sess., at 91 (Cal. Sept. 19, 2018), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1654](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1654).

90. An act to add and repeal Section 2699.6 of the Labor Code, relating to employment, Assemb. B. 1654 – Legis. Counsel's Digest, 2017-18 Sess., at 91 (Cal. Sept. 19, 2018), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1654](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1654).

itemized wage statements and to maintain adequate payroll records, among other violations.<sup>91</sup> Defendants argued—and the trial court agreed—that plaintiff had failed to comply with the pleading requirements for a class action as the law demanded.<sup>92</sup> The Court of Appeals issued a preemptory writ of mandate directing the trial court to issue a new order striking the representative claims because they were subject to class action requirements, which the plaintiffs failed to satisfy.<sup>93</sup> On appeal to the California Supreme Court, defendants argued the Court of Appeals' judgment would lead to absurd results if certain claims under Labor Code section 2699 would require plaintiffs satisfy class action requirements, while others would not.<sup>94</sup> Further, defendants argued that the Legislature intended for all actions raised under PAGA to be class actions.<sup>95</sup> Otherwise, the act would be unconstitutional for violating the due process rights of employers, as well as nonparty aggrieved employees not provided an opportunity to join the action.<sup>96</sup>

The court disagreed with the defendants.<sup>97</sup> The court reasoned that because a PAGA action is designed to benefit the public through the deputized plaintiff, the one-way operation of collateral estoppel in this limited situation does not violate the employer's right to due process of law.<sup>98</sup> The potential impact on remedies other than civil penalties is ancillary to the action's primary objective.<sup>99</sup>

*Arias* expands PAGA's scope by facilitating a plaintiff's ability to raise a representative action, without satisfying the heightened standards typical to a class action.<sup>100</sup> Additionally, *Arias* clarified that collateral estoppel could be used "only against non-named aggrieved employees with regard to civil penalties collected under PAGA, not the underlying [l]abor [c]ode violations."<sup>101</sup>

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91. *Arias*, 46 Cal. 4th at 976.

92. *Id.*

93. *Id.* ("The trial court granted defendants' motion to strike the seventh through eleventh causes of action . . . on the ground that plaintiff failed to comply with pleading requirements for class actions." Following plaintiff's petition to the Court of Appeal for a writ of mandate, the court held "the causes of action brought in a representative capacity alleging violations of the unfair competition law, but not the representative claims under [PAGA], were subject to class action requirements.")

94. *Id.* at 982.

95. *Id.* at 983-84.

96. *Id.* at 984.

97. *See Arias*, 46 Cal. 4th at 988 (affirming the Court of Appeal's judgment).

98. *Id.* at 987.

99. *Id.*

100. *See Goodman*, *supra* note 1, at 424.

101. Jennifer Barrera, *Private Attorneys General Act: Unique State Law Needs Reform to Prevent Abuse, Assure Enforcement Goals Met*, CAL. CHAMBER OF COM.: LAB. & EMP. – 2018 CAL. BUS. ISSUES, at 62 (Jan. 2018).

*B. An Employee Cannot, Through a Pre-Employment Agreement, Waive the Right to Bring a PAGA Action, Because Such Agreements Violate Public Policy (Iskanian v. CLS Transportation Los Angeles, LLC)*

In *Iskanian v. CLS Transportation Los Angeles, LLC*, the court ruled that pre-employment arbitration agreements requiring employees to give up their right to a PAGA action are unenforceable as a matter of public policy.<sup>102</sup> As part of his pre-employment agreement, the plaintiff entered into an arbitration agreement that waived his right to class and representative actions.<sup>103</sup> Still, plaintiff sought to raise a representative action under PAGA for his employer's alleged failure to compensate for overtime and meal and rest periods.<sup>104</sup> The issue before the California Supreme Court was whether employers could, as a condition of employment, obligate employees to surrender their right to bring a representative PAGA action.<sup>105</sup>

Relying on California Civil Code section 3513,<sup>106</sup> the court made the distinction that anyone may waive the advantage of a law intended solely for their personal benefit, but no one can waive a law established for public benefit.<sup>107</sup> In other words, a PAGA dispute is not between the employer and employee, but between an employer and the State of California.<sup>108</sup> Further, the court emphasized that the legislature's purpose in enacting PAGA was to enhance the limited enforcement capability of the LWDA by deputizing employees, and that a waiver to bring a PAGA action would disable this important law-enforcement mechanism.<sup>109</sup> Requiring an employee to waive their PAGA rights in a pre-employment agreement would essentially defeat the law's purpose—the state would be unable to enforce the law as intended and collect civil penalties associated with labor code violations.<sup>110</sup>

The court noted that the aggrieved plaintiff raises a PAGA action, not solely through her own accord, but as a representative of the state.<sup>111</sup> Due to this, a PAGA waiver is unlike other pre-employment waivers

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102. *Iskanian*, 59 Cal. 4th at 360.

103. *Id.* at 359.

104. *Id.*

105. *Id.* at 360.

106. *Id.* at 382-83 (citing CAL. CIV. CODE § 3513 (West)) (“Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.”).

107. *Id.* at 382-83.

108. See Barrera, *supra* note 101.

109. *Iskanian*, 59 Cal. 4th at 383.

110. *Id.*

111. See *id.*

because the pre-employed plaintiff would essentially be giving up the option to act as a proxy for the state—which contravenes public policy.<sup>112</sup>

C. An Employee May Seek Penalties for Labor Code Violations Without Suffering Harm (*Huff v. Securitas Security Services USA, Inc.*)

*Huff* presented a unique question under PAGA litigation—whether an aggrieved employee who brings a claim for a labor code violation under PAGA may seek penalties for other labor code violations which did not affect him or her personally.<sup>113</sup> The court held that in suffering from one labor code violation, an aggrieved employee could raise additional employer violations of the labor code, irrespective of whether the plaintiff suffered firsthand from the additional violations.<sup>114</sup>

Plaintiff Forrest Huff worked as a security guard for defendant Securitas Security Services USA, Inc., for one year, during which time he worked at three different client sites.<sup>115</sup> Huff resigned after a client requested he be removed from his assignment.<sup>116</sup> He sued under PAGA, seeking penalties for labor code violations committed against himself and other employees.<sup>117</sup>

The trial court granted judgment in favor of Securitas for claims where Huff was not personally aggrieved by the alleged violations.<sup>118</sup> However, the trial court later granted Huff's motion for a new trial after finding that it erred.<sup>119</sup> The trial court reasoned that while PAGA's statutory language requires an aggrieved employee to be personally affected by at least one labor code violation, the employee need not be personally affected by all additional labor code violations to pursue penalties on behalf of other aggrieved employees.<sup>120</sup>

On appeal to the Sixth District Court of Appeal, Securitas argued PAGA allows a plaintiff to recover for employer violations of the labor code that do not affect the individual bringing the suit only when the violations against the other employees involve the same provision of the labor code as that which allegedly harmed the plaintiff.<sup>121</sup>

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112. *See id.*

113. *Huff*, 23 Cal. App. 5th at 750.

114. *Id.* at 750-51.

115. *Id.* at 751.

116. *Id.*

117. *Id.*

118. *Id.* at 751-52.

119. *Huff*, 23 Cal. App. 5th at 752.

120. *Id.*

121. *Id.* at 753-54.



In interpreting PAGA, the court looked to the legislature's intent.<sup>122</sup> The court stated that Labor Code section 2699(a) provides merely that any provision of the labor code where a civil penalty could be assessed and collected by the LWDA may, as an alternative, be recovered by an aggrieved employee and on behalf of other employees.<sup>123</sup> Further, the court noted that the statute specifically defines "aggrieved employee" in section 2699(c) as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."<sup>124</sup>

The court interpreted those provisions to plainly mean that a person who was employed by the alleged violator and affected by at least one of the violations alleged in the complaint can recover any labor code penalties recoverable by state authorities in a PAGA action.<sup>125</sup> The court further reasoned that in enacting PAGA, the legislature intended to solve the problem of inadequate state enforcement resources by deputizing private citizens to pursue labor code violators.<sup>126</sup> It would make little sense, the court argued, to prevent a PAGA plaintiff—who is a proxy for state enforcement authorities—from seeking penalties for all violations an employer commits, as the goal is to achieve maximum compliance with state labor laws.<sup>127</sup> Requiring that a plaintiff first be aggrieved by all asserted violations in a PAGA case does not flow logically from the fact that a plaintiff is standing in for government authorities to collect penalties primarily paid to the state.<sup>128</sup> Therefore, it would be against the legislature's intent to limit the plaintiff's pursuit of penalties to only those labor code violations that affected the aggrieved employee personally.<sup>129</sup>

The court noted the holding does not require a plaintiff to satisfy traditional standing requirements as *Securitas* argued.<sup>130</sup> A PAGA action is a type of *qui tam* proceeding.<sup>131</sup> Since the plaintiff is acting on behalf of the government, traditional standing requirements do not apply to *qui tam* actions.<sup>132</sup> However, a PAGA suit is not a pure *qui tam* action, as only an aggrieved employee, and not the general public, can bring forth

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122. *Id.* at 754.

123. *Id.* (citing CAL. LABOR CODE § 2699(a)).

124. *Id.* (citing CAL. LABOR CODE § 2699(c)).

125. *Huff*, 23 Cal. App. 5th at 754-56.

126. *Id.* at 756.

127. *Id.*

128. *Id.* at 757.

129. *Id.*

130. *Id.*

131. See *Huff*, 23 Cal. App. 5th at 757 (comparing PAGA actions to more typical *qui tam* suits such as those brought under the False Claims Act).

132. *Id.*

an action.<sup>133</sup> In this sense, standing requirements for PAGA are narrower than those for traditional *qui tam* actions, but broader than those for personal suits or even class actions.<sup>134</sup> To further bolster its ruling, the court found it persuasive that two district courts congruently interpreted the PAGA statute to further empower the aggrieved employee.<sup>135</sup>

### *1. Employer Liability Expands*

The *Huff v. Securitas* case expanded employer liability. Now that employees are entitled to allege all labor code violations on behalf of themselves and fellow employees, businesses will likely experience increased litigation costs to combat these PAGA cases. While an aggrieved employee cannot assert baseless claims and must still present evidence that at least one personal violation occurred, critics argue that such an expansive interpretation of PAGA leaves the business community vulnerable to aggrieved employees who now have an incentive to deliberately seek any instance of a labor code violation that might grant them a promising pay day. Plaintiffs will have little to lose, as they will not be required to have personal knowledge of ongoing employer violations, and they can instead unearth them through discovery.<sup>136</sup> The effect is particularly burdensome to the small business employer who may not have a human resources or compliance department that can advise on the complexities of labor code violations, particularly those that might implicate a devastating financial loss.<sup>137</sup>

Further, as employer liability expands, and compliance becomes more difficult, the court's opinion may drive businesses from California

133. *Id.*

134. *See id.* (PAGA standing requirements “strike[] a reasonable balance, requiring a plaintiff to have some connection to the employer’s unlawful practices, while also advancing the state’s interest in vigorous enforcement.”).

135. *Id.* at 758; *see also* *Jeske v. Maxim Healthcare Servs., Inc.*, No. CV F 11-1838 LJO JLT, 2012 WL 78242, at \*13 (E.D. Cal. Jan. 10, 2012) (“[Plaintiff] is correct that she need not have suffered all PAGA violations for which she seeks to pursue civil remedies.”); *Holak v. K Mart Corp.*, No. 1:12-cv-00304-AWI-MSJ, 2015 WL 2384895, at \*5 (E.D. Cal. May 19, 2015) (“Plaintiff need not have actually suffered all of the Labor Code violations that she alleges to have taken place for purposes of seeking PAGA penalties.”).

136. *See Huff*, 23 Cal. App. 5th at 761 (addressing the petitioner’s criticisms that the *Huff* ruling will lead to imaginative yet baseless pleadings, consequently overburdening courts with frivolous PAGA actions).

137. *See* George A. Aloupas, *PAGA* (*Huff v. Securitas*, (2018) 23 Cal. App. 5th 745), TLD LAW (Nov. 1, 2019) (explaining how *Huff* “opens [e]mployers up to additional liability”), <https://tldlaw.com/paga-huff-v-securitas-2018-23-cal-app-5th-745/>; Bob Huff, *PAGA Fixes Are Needed to Foster Growth*, THE ORANGE COUNTY REG. (Aug. 26, 2019) (explaining how PAGA’s penalty scheme especially hurts small businesses and why “[w]ithout a fix, PAGA lawsuits under California’s labor code will continue to be a significant barrier to starting a business . . . and unduly punishing many of those who do.”), <https://www.ocregister.com/2019/08/26/paga-fixes-are-needed-to-foster-growth-bob-huff/>.

to other states. Local economies and California in general might suffer financially if businesses decide to outsource. Local and state government agencies will further bear the loss by being unable to collect taxes and other expenses that flow from a strong business community in California.

## 2. *Huff's* Potential Impact is Perhaps Limited

Despite these dire predictions, authors Wesley Shelton and Thomas Kaufman in *Court Expands Reach of California PAGA Representative Actions*, noted the practical effect of the *Huff* decision may be limited.<sup>138</sup> They highlight an employee is still required to provide the LWDA with written notice of the facts and circumstances relating to each alleged violation of the labor code before bringing a PAGA action.<sup>139</sup> They argue this will be difficult to do if the allegations are speculative or ill-defined, and employers may attempt to limit the scope of discovery to prevent an extensive investigation into other potential areas of liability.<sup>140</sup> If the employee submits a fact-free letter citing a long list of labor code violations, the vagueness of their allegations may provide a basis to challenge to the PAGA claim for failure to properly exhaust administrative remedies with the required specificity.<sup>141</sup> Additionally, employers can resort to a defense of manageability—a long list of labor code violations does not necessarily implicate that all allegations can be manageably tried through a single lawsuit.<sup>142</sup> Although there is no statutory prerequisite mandating a PAGA claim to be manageable—that a case can be managed fairly and efficiently<sup>143</sup>—some courts have embraced the defense, while others have not.<sup>144</sup>

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138. Wesley Shelton & Thomas Kaufman, *Court Expands Reach of California PAGA Representative Actions*, SHEPPARD MULLIN: LAB. & EMP. L. BLOG (June 5, 2018), <https://www.laboremploymentlawblog.com/2018/06/articles/wage-and-hour/california-paga-representative-actions-huff/>.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *See, e.g.,* *Duran v. U.S. Bank Nat'l Assn.*, 59 Cal. 4th 1, 28-29 (2014) (“In certifying a class action, the court must also conclude that litigation of individual issues . . . can be managed fairly and efficiently.”).

144. Julia Wells & Tagore Subramaniam, *PAGA: Forging Ahead*, *ADVOC. MAG.* (Oct. 2019), <https://www.advocatemagazine.com/article/2019-october/paga-forging-ahead>; *see also* *Ortiz v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 WL 1117614, at \*4 (N.D. Cal. Mar. 19, 2014 (dismissing the plaintiffs’ PAGA claims as unmanageable “because a multitude of individualized assessments would be necessary”); *Rix v. Lockheed Martin Corp.*, No. 09cv2063 MMA (NLS), 2012 WL 13724, at \*4 (S.D. Cal. Jan. 4, 2012) (denying without prejudice the plaintiff’s request to compel discovery because the discovery sought was unduly burdensome at the time).

In addition to *Huff*'s potential limitation, procedural mechanisms such as summary adjudication remain available to weed out meritless claims before trial.<sup>145</sup> As a result, plaintiffs are disincentivized from pleading baseless claims to collect PAGA penalties because they must prove at trial that a violation in fact occurred.<sup>146</sup>

Still, these procedural mechanisms require litigation, which is an added expense employers bear to defend against employees who have an incentive to sue under PAGA. While the *Huff* court recognized Securitas's concern<sup>147</sup> that plaintiffs may use PAGA claims "as a fishing expedition to attempt to uncover other violations committed by the employer," the court noted those concerns are "better directed to the [l]egislature."<sup>148</sup> Shelton and Kaufman echoed Securitas's fears, noting "employers can now expect plaintiffs to attempt to use this case to justify sending a barrage of discovery demands, seeking essentially to conduct a complete audit of the organization's compliance with state and wage hours laws."<sup>149</sup>

Unless, as the *Huff* court suggests, the legislature takes appropriate measures to address this plaintiff-friendly decision, it appears that employers will have to regard a potential PAGA lawsuit as part of the cost of doing business in California.

#### IV. CABIA BUSINESS & INDUSTRIAL ALLIANCE V. XAVIER BECERRA

The *CABIA* litigation is deeper than a superficial attack to the constitutionality of the law—it symbolizes the frustration the California business community feels toward PAGA.

##### A. CABIA files Complaint Alleging PAGA is Unconstitutional

On November 28, 2018, CABIA sued California Attorney General, Xavier Becerra, for injunctive and declaratory relief in Orange County Superior Court.<sup>150</sup> The complaint seeks a temporary restraining order and preliminary and permanent injunctions against the implementation

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145. *Huff*, 23 Cal. App. 5th at 761.

146. *Id.*

147. Securitas was concerned that the court's expansive interpretation of "aggrieved employee" would lead to absurd consequences as penalties collectable by PAGA plaintiffs would be bound solely by their pleading imagination. The court stated "the trial courts are [] equipped to manage cases in a way that avoids unreasonable consumption of time or resources." Further, the court added, "where appropriate cases brought under PAGA can be designated as complex under the Rules of Court." *Id.*

148. *Id.*

149. Shelton & Kaufman, *supra* note 138.

150. See generally CABIA Complaint, *supra* note 16.

and enforcement of PAGA.<sup>151</sup> The complaint also asks the court to issue a judgment declaring PAGA unconstitutional and unenforceable.<sup>152</sup>

CABIA represents the interests of small and mid-sized businesses in California, some of which have been sued under PAGA.<sup>153</sup> The association advocates for the California business community through public education, lobbying, and grassroots organizing.<sup>154</sup> CABIA was formed for the specific purpose of accomplishing the repeal or reform of PAGA.<sup>155</sup>

CABIA challenged the current PAGA framework as unconstitutional, arguing:

[V]alid and binding arbitration agreements are rendered unenforceable; private contingency-fee attorneys are permitted to litigate on behalf of the State without oversight or coordination with any State official; private attorneys are allowed to negotiate settlements that enrich themselves at the expense of everyone but themselves; due process protections embodied in class action procedural rules do not apply; trial courts are divested of discretion to manage certain discovery issues; “fishing expeditions” are expressly authorized, allowing discovery into claims and theories about which a litigant has no personal knowledge; [and] limited liability structures and/or a person’s relationship to an employer is meaningless for the purposes of imposing liability for PAGA penalties.<sup>156</sup>

*B. Alleged Causes of Action—CABIA Asserts the PAGA Plaintiff Abuses Iskanian, and Often Serves Its Own Interest at the Expense of the State*

The CABIA complaint alleges that PAGA is unconstitutional under the following nine causes of action:

- (1) violation of California’s Separation of Powers Doctrine;
- (2) violation of the United States Constitution’s Fourteenth Amendment Procedural Due Process Protections;
- (3) violation of the United States Constitution’s Fourteenth Amendment Substantive Due Process Protections;
- (4) violation of California Constitutional Procedural Due Process Protections;
- (5) violation of California Constitutional Substantive Due Process Protections;

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151. *Id.* at 54.

152. *Id.*

153. *Id.* at 3.

154. *Id.*

155. *Id.*

156. See CABIA Complaint, *supra* note 16, at 2-3.

- (6) violation of the United States Constitution's Eighth Amendment Excessive Fines and Unusual Punishment Protections;
- (7) violation of California Constitution's Excessive Fines and Unusual Punishment Protections;
- (8) violation of the United States Constitution's Fourteenth Amendment Equal Protection of the Laws Guarantee;
- (9) violation of the California Constitution's Equal Protection Clause.<sup>157</sup>

Of the allegations raised, this Note specifically discusses the first cause of action “violation of California’s Separation of Powers Doctrine” and its relation to the *Iskanian* decision referenced above to explain exploitive settlement tactics PAGA plaintiffs frequently engage in. Although this cause of action was dismissed by the court,<sup>158</sup> its discussion is helpful in that it elucidates how PAGA plaintiffs often strategically stifle the state from larger settlement amounts.

CABIA alleged a violation of California’s Separation of Powers Doctrine and made notable reference to the *Iskanian* decision. As indicated above, the California Supreme Court in *Iskanian* determined that an express class action waiver in an employment arbitration agreement is unenforceable with respect to PAGA claims under California law.<sup>159</sup> As the cause of action explained, *Iskanian* is premised on the characterization of a PAGA as a *qui tam* proceeding and accordingly does not violate the separation of powers.<sup>160</sup> The three traditional *qui tam* criteria are: (1) the statute exacts a penalty; (2) part of the penalty is paid to the informer; and (3) the informer is in some way authorized to bring suit to recover the penalty.<sup>161</sup> Lastly, *Iskanian* found the government to be the real party in interest in the suit, despite the plaintiff receiving 25% of all penalties collected.<sup>162</sup>

CABIA argued, however, that PAGA violates California’s Separation of Powers Doctrine because the statute “does not provide the judiciary sufficient oversight of the judicial functions it has unconstitutionally delegated to private citizens and their counsel.”<sup>163</sup> In addition, it asserted PAGA plaintiffs enjoy status similar to the Executive branch,

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157. *See id.* at 41-54.

158. *See generally* Minute Order at 1, Cal. Bus. & Indus. All. v. Becerra, No. 30-2018-01035180-CV-JR-CXC (Orange Cty. Super. Ct., Sept. 11, 2019).

159. *Id.* at 24-25.

160. *See* CABIA Complaint, *supra* note 16, at 25 (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 382 (2014)).

161. *Id.*

162. *Id.*

163. *Id.* at 42.

without the requisite oversight to ensure plaintiffs advocate on behalf of the state's interests.<sup>164</sup>

CABIA emphasized the private contingency-fee attorneys who file and pursue PAGA claims make no effort to further the interests of the state in litigation, and in fact, often work against the interests of the state in private mediation.<sup>165</sup> In practice, CABIA asserts, private-contingency fee-attorneys exploit the holding of *Iskanian* to pressure employers with binding arbitration agreements to participate in private mediation.<sup>166</sup> Once in mediation the parties rarely afford PAGA penalties any serious consideration.<sup>167</sup> Instead, "the parties usually arrive at a sum that will resolve the underlying statutory claims on a class-wide basis."<sup>168</sup> The private contingency-fee attorney has an interest in recommending only a small portion of the total to PAGA to maximize attorney's fees.<sup>169</sup> CABIA contends:

[A] lack of oversight by the legislative, executive, and judicial branches of the California State government . . . has allowed PAGA to become a tool of extortion and abuse by the Plaintiffs' Bar, who exploit the special standing of their PAGA plaintiff clients to avoid arbitration, threaten business-crushing lawsuits, and extract billions of dollars in settlements.<sup>170</sup>

In other words, according to CABIA although the state should technically receive 75% of all PAGA penalties assessed, it has received far less than it should.<sup>171</sup> The PAGA plaintiff, through this procedural mechanism, deprives the state of funds it would otherwise be entitled to.

In *Private Attorneys General Act Lawsuits in California: A Review of PAGA and Proposals for Reforming the "Sue Your Boss" Law*, Chris Micheli makes a similar argument.<sup>172</sup> Micheli explains how the PAGA settlement process functions to deprive the state of a larger settlement amount, which exposes how PAGA plaintiffs are not acting in the state's best interest.<sup>173</sup> Due to this, PAGA has not fulfilled its promise of supplementing funding for the Labor Commissioner in the way its proponents intended prior to the law's enactment.<sup>174</sup>

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164. *Id.*

165. *Id.* at 25.

166. See CABIA Complaint, *supra* note 16, at 25.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* at 3.

171. See *infra* notes 178-83 and accompanying text.

172. See generally Micheli, *supra* note 57.

173. *Id.* at 279.

174. *Id.*

Similar to the argument made in the *CABIA* litigation, Micheli argues that PAGA claims are often released through a broader settlement that includes claims arising under other labor code violations.<sup>175</sup> Typically in these instances, some of the total settlement goes towards the PAGA claims, but at a significantly reduced amount.<sup>176</sup> This tactic casts doubt as to whether the PAGA plaintiff truly acts in the state's best interest. The effect of this practice means little money makes its way to the state.<sup>177</sup> By minimizing the allocation of the settlement to PAGA claims, the attorney pursuing his or her best interest has done so at the expense of the state, an outcome that is inconsistent with the quasi-*qui tam* framework upon which *Iskanian* rests. Micheli argues PAGA claims should "remain intact and appropriately allocate the financial component to the state."<sup>178</sup> Otherwise, he asserts, California should prohibit PAGA claims as a tool to exact large settlements from employers.<sup>179</sup>

The *CABIA* complaint references certain examples that display what Micheli alludes to—the disproportionate amount of money the PAGA plaintiff receives at the expense of the state.<sup>180</sup> The complaint notes that in *Viceral v. Mistras Group*, the parties finalized a \$6,000,000 settlement total that allocated only \$20,000 to the PAGA claim, even though the settlement was originally valued at \$12,900,000.<sup>181</sup> The plaintiffs' attorneys obtained \$2,000,000 in fees and \$46,000 in costs.<sup>182</sup> Another example mentioned is *Price v. Uber Technologies, Inc.*, in which parties agreed to a \$7,750,000 settlement for a case originally estimating liability at over \$1,000,000,000.<sup>183</sup> The plaintiff's attorneys obtained \$2,325,000, while the average Uber driver was awarded slightly over one dollar (\$1.08).<sup>184</sup> And *John Doe v. Google Inc.*, arrived at a \$1,000,000 settlement, of which the attorneys received \$330,000; meanwhile each aggrieved employee obtained just over fifteen dollars (\$15.50).<sup>185</sup>

As *CABIA* argues, disproportionate settlement amounts such as these indicate that PAGA plaintiffs' attorneys often enrich themselves at

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175. *Id.*

176. *Id.*

177. *Id.*

178. Micheli, *supra* note 57, at 279.

179. *Id.*

180. See *CABIA* Complaint, *supra* note 16, at 40-41.

181. *Id.* at 40.

182. *Id.* at 40-41.

183. *Id.* at 41.

184. *Id.*

185. *Id.*



the expense of the state.<sup>186</sup> The gross imbalance in settlement amounts finalized in these lawsuits raise concerns regarding whether the PAGA plaintiff, in reality, acts on behalf of the state's best interest.

*C. Looking Forward—Potential Outcomes*

This section explores the potential outcomes and implications that would likely follow after *CABIA*'s conclusion.

*1. If PAGA is Ruled Unconstitutional*

*a. Memorandum Provides Discussion of Repercussions That Would Occur if PAGA Were to Disappear*

In a memorandum to California's Attorney General, Xavier Becerra, dated November 27, 2017, the Legislative Analyst's Office provided an analysis of the fiscal effects that would follow from a statutory initiative to repeal PAGA.<sup>187</sup> Although observing the potential elimination of PAGA in a different context, the memorandum is relevant to this analysis in that it discusses the implications that would follow if PAGA were to disappear.<sup>188</sup> The memorandum asserts a PAGA repeal would mean that in order to remedy labor law violations, employees could either file wage claims with the Labor Commissioner's Office or file traditional lawsuits against their employers in court.<sup>189</sup>

Among the most notable fiscal effects, the memorandum indicates the state trial court costs could resultingly be reduced to the low tens of millions of dollars annually.<sup>190</sup> Specifically, since employees would no longer be allowed to file PAGA lawsuits in trial courts, a PAGA repeal would reduce the workload of the state trial courts.<sup>191</sup> This reduction would allow trial court resources to become available to focus on other types of cases.<sup>192</sup>

Despite the reduction in court costs, a PAGA repeal would compromise the state's labor code enforcement capability.<sup>193</sup> It would increase the number of wage claims filed with the Labor Commissioner, and the LWDA would likely encounter the same difficulties it had prior to

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186. See *CABIA* Complaint, *supra* note 16, at 40.

187. Memorandum from Mac Taylor & Michael Cohen to Attorney Gen. Xavier Becerra (Nov. 27, 2017) (on file with the Office of the Attorney General) [hereinafter Taylor & Cohen Memo].

188. *Id.* at 3.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. Taylor & Cohen Memo, *supra* note 187, at 3.

PAGA's enactment; its resources would be strained and ability to timely adjudicate its caseload compromised.<sup>194</sup> Interestingly, however, the memorandum also notes that "the Labor Commissioner's Office would no longer need to review and investigate PAGA lawsuit notices, resulting in newly available staff resources that could be redirected to other priorities."<sup>195</sup>

Lastly, the memorandum predicts reduced state revenue from the elimination of PAGA penalties, which is perhaps the most notable effect.<sup>196</sup> If PAGA penalties were no longer paid to the state, funds available for labor law enforcement would dwindle—potentially in the low tens of millions of dollars annually.<sup>197</sup>

*b. A Substantial Loss of State Income*

From California's perspective, losing the enforcement mechanism existing in PAGA would be devastating. California receives a substantial sum in PAGA payments, and that figure continues growing exponentially each fiscal year.<sup>198</sup> In fiscal year 2014-2015, the state collected \$8,402,507—a substantial increase from the \$5,083,161 it collected in 2013-2014.<sup>199</sup> In subsequent years, 2015-2016 and 2016-2017, the state collected \$13,588,659 and \$20,946,544, respectively.<sup>200</sup> In fiscal year 2017-2018, the most recent figure available, the state collected \$34,640,059.<sup>201</sup> The difference in growth from fiscal years 2016-2017 and 2017-2018 was nearly double in just one year. This marks the largest increase from one fiscal year to another since PAGA's inception. These appreciable figures indicate the tremendous sums the state receives from PAGA litigation. They also show that PAGA lawsuits have increased substantially in recent years, and that the law continues being a popular labor code enforcement mechanism far too lucrative to eradicate.

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194. *Id.*

195. *Id.*

196. *Id.*

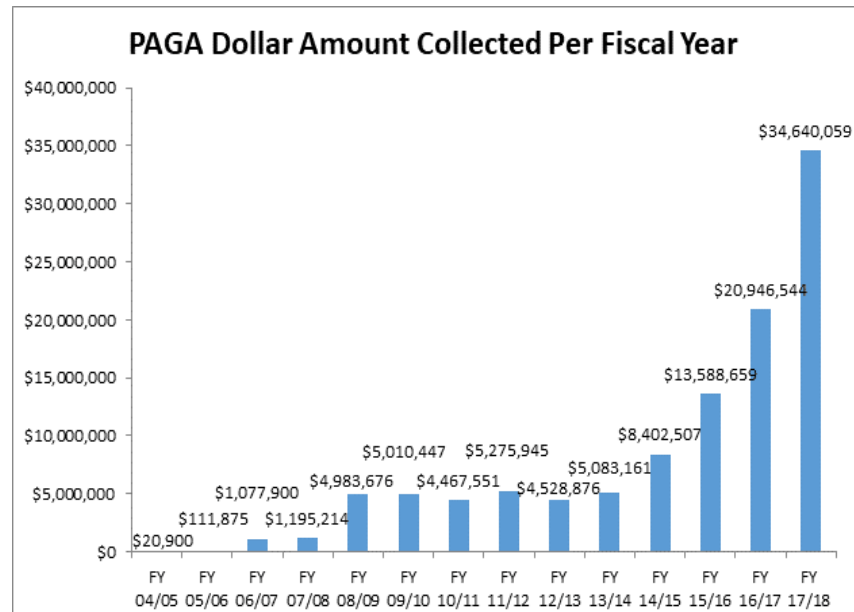
197. *Id.*

198. *See infra* Figure 1; *see also* 2019 DIR PAGAInfo Email, *supra* note 7.

199. *See infra* Figure 1.

200. *Id.*

201. *Id.*



**Figure 1**<sup>202</sup>

If the state did not have PAGA, or if the law were eradicated by the *CABIA* litigation, it would be difficult, perhaps impossible, to collect the amount of money it currently collects from deputized plaintiffs. The large financial benefits incentivize the California legislature to turn a blind eye to the difficulties pervading PAGA. Further, the California legislature will almost certainly continue to defend or expand the law to maintain its financial benefits. Alternatively, if critics push back on the law more fiercely, the legislature may find ways to improve PAGA to prevent its eradication.

*c. Effect on Employers and Employees*

California would revert to its pre-2004 labor enforcement mechanism, in which the Attorney General—and not the deputized plaintiff—would retain the sole power to enforce the labor code. Consequently, there would likely be a reversion to pre-PAGA enforcement. Unless the legislature affords the LWDA a substantial budget proposal to increase staffing levels, the LWDA would likely continue having problems effectively enforcing the labor code. California would no longer be able to

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202. 2019 DIR PAGAInfo Email, *supra* note 7. An interesting observation is how the dollar amount collected per fiscal year spiked dramatically since 2014—the year the California Supreme Court delivered the *Iskanian* ruling. Further research on *Iskanian*'s impact on PAGA actions might help explain the dramatic increase represented by these figures.

collect on PAGA penalties. Although critics of PAGA argue the state's revenue from PAGA claims is disproportionate to that of the PAGA plaintiff, the state still profits from successful PAGA suits.<sup>203</sup>

Moreover, as enforcement mechanisms wane, the amount of entities functioning without tax and licensing requirements would likely increase. Such a ruling would be a blow not only to the state, but also to the aggrieved employee, who would likely find it more difficult to raise a grievance against an employer due to the loss of enforcement available under PAGA.

The best-case scenario for employers would be the court's finding PAGA unconstitutional. Employers would be less vulnerable to lawsuits from aggrieved employees asserting labor code violations on behalf of co-workers and former employees. Further, releasing employers from bearing additional litigation expenses would afford them more time to focus on productivity and would decrease the cost of doing business in California. Courts would also breathe a sigh of relief as the strain on their dockets would likely decrease, thus furthering judicial economy.<sup>204</sup>

### *2. If CABIA is Unsuccessful on Constitutionality Challenge*

A ruling in favor of the Attorney General would maintain the status quo. If the court reaffirms PAGA's validity under its most determinative attack thus far, it would leave employers with little hope to eradicate the law. The trend of PAGA's expansion in scope would likely continue for years to come, and aggrieved employees, the PAGA plaintiff, and the state would continue bearing benefits associated with generous PAGA penalties and hefty payouts.

Regardless of the prevailing party, an appeal is likely inevitable, and the case may very well reach the California Supreme Court.

## V. PROPOSED SOLUTIONS

### *A. Option 1: Settlement Proposal Review Hearing*

If PAGA survives *CABIA*, then, to remain loyal to its legislative purpose, the legislature should implement more stringent requirements for courts reviewing settlement agreements involving PAGA claims. For example, when a judge is presented with a settlement agreement including a PAGA claim, the court could require a settlement proposal review hearing.

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203. See *supra* Part IV.B.

204. See Taylor & Cohen Memo, *supra* note 187, at 3.

At these settlement proposal review hearings, courts should be bound by a uniform standard of review. Courts, for example, could make their own standard by borrowing, or building on, settlement standards used in preliminary approval hearings in class actions.

For example, a court reviewing a proposed class action settlement at the preliminary approval hearing phase determines whether it is “fair, reasonable, and adequate” to the class members.<sup>205</sup> The judge also considers any indications of wrongdoing to ensure the settlement does not just benefit the lead plaintiff and counsel.<sup>206</sup> A court handling a proposed settlement agreement involving a PAGA claim could use a similar standard to promote principles of fairness and reasonableness.

Further, these hearings would afford the judge an opportunity to question both parties regarding the settlement agreement, and if there is more money being allocated to individual claims versus the PAGA claim, the judge can request an explanation as to why the PAGA claim is minimized. If the parties fail to provide a compelling reason, the judge could reject the settlement agreement under the rationale that the stipulation does not represent the best interest of the general public—the intended beneficiary of the PAGA law.

By mandating such a requirement, the legislature would place itself in a position to receive more of the money settlement agreements involving PAGA claims resolve. This solution could lead to increased LWDA funding, which would in the long term, diminish or eliminate altogether, its reliance on PAGA. Further, such requirements would level the current existing imbalance that commonly allows plaintiffs’ attorneys to stifle employers and the state from their own money.

### *B. Option 2: Repeal PAGA*

Another solution is for the California legislature to repeal PAGA. Over the years, both the California judiciary and legislative bodies have defended PAGA, allowing the law to evolve into its present-day mechanism. The aggrieved employee is carrying out the responsibilities of the Attorney General, meanwhile the state idly sits by, waiting to collect civil penalties awarded at the end of litigation.

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205. See D. Scott Carlton, *Class Actions 101: Six Tips for Approaching Class Action Settlements*, AM. BAR ASS’N (Oct. 31, 2019) <https://www.americanbar.org/groups/litigation/committees/class-actions/practice/2019/six-tips-for-approaching-class-action-settlements/>; see also Erin Shaak, *From Talks to Check: The Stages of a Class Action Settlement*, CLASSACTION.ORG (July 22, 2019), <https://www.classaction.org/blog/from-talks-to-checks-the-stages-of-a-class-action-settlement>.

206. Erin Shaak, *From Talks to Check: The Stages of a Class Action Settlement*, CLASSACTION.ORG (July 22, 2019), <https://www.classaction.org/blog/from-talks-to-checks-the-stages-of-a-class-action-settlement>.

In a pre-PAGA California when the state lacked resources to enforce the labor code, PAGA was a solution that divested the responsibilities of the Attorney General to the general public and one that surely seemed appealing. Through PAGA, the state created an escape hatch by which it obtained the resources to implement the labor code it so longed, without having to actually obtain more funds from the state for the LWDA.

PAGA has proven to be an expensive escape hatch thus far for employers. If eradicated, California would revert to pre-PAGA days, which would allow the state to handle this situation with the knowledge and experience gained over the course of PAGA's existence. The state would have to allocate more funds and resources to the LWDA and itself implement the labor code.

Critics of this position would likely argue it would be absurd to return to a pre-PAGA period of time because the law has been effective in fulfilling its intended purpose of increased labor code enforcement. PAGA, however, has also proven to be an extortive tool by the PAGA plaintiff, which allows it to capitalize on violations that prove to be an expensive litigation strain on employers and do little to benefit the general public.<sup>207</sup> Moreover, although the state collects millions of dollars in PAGA suits, these suits often also deprive California of money, because often only a small settlement amount is allocated to the PAGA suit, while the PAGA plaintiff retains the majority. Of course, without PAGA, the state would be unable to collect on PAGA claims, but the state would alternatively be in a position to receive the full amount of a labor code violation and would not have to split judgments with an aggrieved plaintiff.

### *C. Option 3: Employer/Employee Led Solutions*

#### *1. Employer Solutions*

In light of the positive treatment courts have afforded PAGA cases and the law's expansion since its inception, employers are best off implementing preventative measures that will limit vulnerability to a PAGA lawsuit.

Employers can, for example, work with their internal Human Resources departments, or respective personnel handling workplace policies, to conduct thorough investigations intended to uncover circumstances not complying with the labor code. Labor code language can be

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207. See *supra* Part IV.

difficult to understand to ensure employees receive proper meal breaks and rest periods.

The ambiguity and technical language in the labor code adds to the complexity of achieving compliance—many employers believe they are complying, when in fact, technical violations expose them to devastating penalties.<sup>208</sup> Because of this, it is important for employers to be prudent in ensuring compliance, and should consider attending educational seminars provided by state agencies.<sup>209</sup> These seminars are free of charge and often cover a wide range of topics, such as: State Labor Law and Payroll Tax, and Employee/ Independent Contractor classification.<sup>210</sup>

In addition, employers can seek assistance from the California Employer Advisory Council (“CEAC”).<sup>211</sup> The CEAC is a nonprofit, statewide organization, with various locations throughout the state that provides information and resources on employment and workforce development issues.<sup>212</sup> Regional offices hold compliance-related seminars frequently, and can help employers stay current with developments in the labor code.<sup>213</sup>

Employers should also implement systems to ensure persons within their management structure are properly informed of all mandatory personnel policies. Management personnel should work diligently to understand the labor code provisions relevant to their industry and should ensure practices reflect compliance.

Employers should keep and maintain proper employee records. Such records should detail work hours, rest and meal periods, overtime hours worked, etc. It is important to maintain these records, as the employer often bears the burden of keeping detailed work-records in litigation. Through this practice, employers will be able to hold themselves accountable if employees are not receiving adequate breaks. Consequently, employers could take immediate measures to remedy any violations before they escalate into a PAGA lawsuit. If a PAGA action is

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208. See, e.g., Anthony Zaller, *Five Huge Misconceptions About California Employment Law*, CAL. EMP. L. REP. (Aug. 3, 2018), <https://www.californiaemploymentlawreport.com/2018/08/five-huge-misconceptions-california-employment-law/>; *12 Things Everyone Should Know About Employment Law*, LEGAL AID AT WORK (last visited Apr. 29, 2020), <https://legalaidatwork.org/factsheet/12-facts-about-employment-law/>.

209. See STATE OF CAL. DEP’T OF INDUSTRIAL REL., <https://www.dir.ca.gov/dlse/> (last visited May 20, 2020) (providing a list of resources by the Division of Labor Standards Enforcement and the Employment Development Department).

210. *Id.*

211. *California Employer Advisory Council*, STATE OF CAL. EMP. DEV. DEP’T, [https://www.edd.ca.gov/jobs\\_and\\_training/California\\_Employer\\_Advisory\\_Council.htm](https://www.edd.ca.gov/jobs_and_training/California_Employer_Advisory_Council.htm) (last visited Jan. 25, 2019).

212. *Id.*

213. *Santa Clara County EAC*, CAL. EMPLOYER ADVISORY COUNCIL, <https://www.ceac.org/region-2/santa-clara-county-eac/> (last visited Jan. 25, 2019).

raised, however, employers would have security in knowing all employee timesheet and payroll records were properly tracked and would be able to refute any allegations of noncompliance with these records as evidence.

## 2. Employee Solutions

Alternatively, employees should ensure their employers are complying with the labor code and take proper action if an employer is not. The DIR has “Know Your Rights” resources available on its website that educate workers on workplace issues, such as retaliation, unpaid wages and other labor violations.<sup>214</sup> An employee can also contact an attorney or visit a local Labor Commissioner’s office for further assistance.

## VI. CONCLUSION

PAGA was enacted in 2004 to allow plaintiffs to help the underfunded LWDA enforce the labor code. In its current manifestation, the law operates as a costly tool against California employers and the legislative purpose has been undermined as PAGA claims are often settled for the benefit of the PAGA plaintiff and at the expense of the state.

In 2020 and perhaps beyond, PAGA will confront its most threatening challenge to date in *CABIA v. Xavier Becerra*. Regardless of the outcome at the trial court level, observers and the business community can expect an appeal. As the alleged causes of action raise important constitutional challenges, the case may reach the California Supreme Court. If PAGA were to survive *CABIA*, the hope that PAGA could one day disappear would appear unattainable.

Considering the record of favorable judicial and legislative treatment, California courts and the legislature resort to any means necessary to accommodate the law. In light of tight budgetary constraints, the LWDA relies on PAGA plaintiffs to help enforce the labor code. PAGA’s expansion is seen through decisions such as *Arias*, *Iskanian*, and *Huff*.

From an economic perspective, California collects a substantial sum of money from PAGA actions. However, courts can mandate settlement proposal review hearings, which would shift more of the PAGA penalties from the aggrieved plaintiff to the state and the LWDA. In the long term, the state would no longer need to rely on PAGA to enforce the labor code. Without PAGA, the LWDA could itself pursue all labor code violations and collect the full amount of available penalties.

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214. See *Know Your Rights*, STATE OF CAL. DEP’T OF INDUSTRIAL REL., [https://www.dir.ca.gov/DLSE/Know\\_Your\\_Rights.html](https://www.dir.ca.gov/DLSE/Know_Your_Rights.html) (last visited May 20, 2020).



However, if *CABIA*'s constitutionality attack is successful, the California Legislature would have an enormous task of ensuring proper enforcement of the labor code, in hopes of avoiding the pre-2004 enforcement reality that led to PAGA's enactment.

In the meantime, to avoid a PAGA suit, employers should work internally to ensure compliance with the labor code. Employees with workplace issues, on the other hand, should contact an attorney or their local Labor Commissioner's office.

PAGA is undeniably a source of dispute—one that places the business owner and the employee at odds with one another. It is apparent PAGA will continue to be a source of dispute. If the judiciary continues expanding its scope, the legislature ought to implement the safeguard of settlement reviews to help the law achieve the purpose which motivated its enactment.