



WAGE AND HOUR LITIGATION: PAGA CLAIMS

by: Laura K. Sitar, Esq.

Look up the California Labor Code Private Attorney General Act of 2004 on the internet and you may see it referred to as the "bounty hunter's law" by defense attorneys. Undoubtedly, you would find different descriptors used by plaintiff attorneys. Both sides agree, however, that the Private Attorney General Act of 2004 is a powerful enforcement tool with grave financial consequences to employers found in violation of California labor laws and regulations.

WHAT IS THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004?

The California Labor Code provides for civil and statutory penalties for labor code violations. Prior to 2004, civil penalties could only be assessed and collected by the Labor Workforce and Development Agency ("LWDA"). The Private Attorney General Act of 2004 or "PAGA" provided a private right of action for employees to recover civil penalties for violations of the Labor Code on behalf of the State's labor law enforcement agencies, such as the LWDA. The Act's declared purpose is to supplement enforcement actions by public agencies which lack adequate resources to bring all such actions themselves. PAGA makes nearly all violations of the Labor Code subject to a private right of enforcement on behalf of the state.¹ Employees may now seek civil penalties for such diverse violations as an employer's failure to pay appropriate overtime or failure to provide suitable seats when the nature of the work permits their use. An employee may assert a claim on behalf of him or herself and other current or former employees and need not meet the standards for class actions when proceeding in a representative fashion.

Before pursuing a claim under PAGA, an employee must exhaust his or her administrative remedies by providing written notice in the form of a certified letter to the LWDA and the employer detailing the alleged violations, including facts and theories supporting the claim. If the LWDA decides not to investigate or pursue the claim, the employee may file suit. For less serious violations, the employer may cure the violation to avoid civil penalties. If the employer fails to cure, the employee may file suit.

For those violations of the labor code which carry no specified penalty, PAGA authorizes an aggrieved employee to recover \$100 for the first pay period in which a violation has occurred and \$200 per pay period for each subsequent violation. In a representative action, penalties are assessed for each aggrieved employee per pay period. A court has discretion to award a lesser amount than the maximum civil penalty based on the facts and circumstances of the particular case

¹ Long term care providers may see a similarity to *Health and Safety Code* §1430(b) which allows current and former resident to pursue civil claims for violation of the Patient's Bill of Rights and other related statutes and regulations.

and if the maximum penalty would be unjust, arbitrary and oppressive, or confiscatory. Seventy-five percent of any penalty obtained is awarded to the LWDA and twenty-five percent to the employee bringing the action. Finally, a plaintiff who prevails is entitled to attorneys fees.

WHAT DOES THIS MEAN IN PRACTICAL TERMS?

While PAGA claims may be plead as individual actions, they often accompany class action wage and hour claims. Consider an employee who brings a claim for statutory penalties of one hour for each missed meal and break period on behalf of himself and all similarly situated current and former employees. The complaint will generally also include a PAGA claim for civil penalties. If liability is found, the employees would collect premium pay for each meal and break period missed **and** \$100 civil penalties for the first pay period a break or meal period was missed and \$200 for each subsequent pay period for each employee with seventy-five percent of the civil penalty paid to the State. When you add attorneys' fees, the potential financial liability can be staggering.

RECOMMENDATIONS TO AVOID LIABILITY UNDER PAGA?

1. Regularly review all wage and hour related policies and procedures, including break and meal periods, exempt versus non-exempt status, overtime, termination, and reporting time pay.
2. Spell out your policies in detail in your employee handbook, including disciplinary action which will be taken for policy violations.
3. Regularly audit timecards. Look for missed meal periods as well as meal periods of less than 30 minutes.
4. Evaluate your pay periods. Companies that pay on a weekly rather than bi-weekly basis face twice the penalties for the same violations.
5. Respond quickly to any notification of a violation which appears to fit the requirements of PAGA even if the statute is not clearly spelled out.

A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation.

Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, \$100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, where she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California.