



Eye on Washington Legislative Update



California Employers Should Pay Close Attention to Pay Statement Compliance

California labor law is somewhat unique in that it permits enforcement through private civil suits. The Labor Code Private Attorneys General Act of 2003 (PAGA) authorizes employees to bring civil actions to recover penalties that would normally be collected by the Labor and Workforce Development Agency. Employees can also pursue lawsuits on behalf of other employees for violations.

California employers can be subject to lawsuits over what some might view as minor technical violations in wage statements. An error in an employer name or address; missing or incorrect totals, rates of pay, or beginning and ending dates of the payroll period can be enough to pursue substantial civil penalties, even if all employees were paid correctly and no employee suffered any harm.

A California court recently awarded more than \$100 million to employees of a large retailer based on certain omissions in wage statements. In this case, some employees periodically earned nondiscretionary incentive bonuses. When this occurred, the company paid an adjustment to prior overtime earned during the period covered by the incentive bonus, as required, but did not specify the hourly rates or hours worked on the wage statement. The amount was identified as an incremental overtime payment adjustment, with no hours worked or hourly rate.

A separate class of employees in the case related to termination pay. On their termination date, employees were provided with a wage statement that did not include pay period beginning and ending dates, but a second wage statement produced for the terminated employee at the end of the regularly scheduled pay period did include this required information. Despite the employer providing a compliant wage statement at the end of the regular pay period in which the employee was terminated, the court found that the employer had violated the wage statement requirements in the labor code.

The award will reportedly be appealed, but such an award will likely result in closer scrutiny of wage statements by plaintiff's attorneys to find problems that could justify similar class action lawsuits.



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Background

California Labor Code [Section 226\(a\)](#) requires employers to provide a detailed wage statement to their workers at the time of payment showing specified information, including:

- (1) Gross wages earned
- (2) Hours worked
- (3) Number of piece-rate units and any applicable piece rate, if applicable
- (4) All deductions
- (5) Net wages earned
- (6) The inclusive (beginning and ending) dates of the payroll period
- (7) The name of the employee and the last four digits of his or her social security number or employee identification number
- (8) The name and address of the legal entity that is the employer (special rules apply to farm labor contractors)
- (9) All applicable hourly rates in effect and the corresponding hours worked at each rate

Additional wage statement requirements can be found in other parts of the Labor Code (e.g., overtime paid in arrears, additional piece-rate employee requirements and paid sick leave disclosure requirements); the California Division of Labor Standards Enforcement (DLSE) Interpretations Manual (e.g., commissioned employee requirements); and in DLSE Opinion Letters (for example, requirements for displaying corrections on subsequent wage statements).

Labor Code Section 226(e) provides monetary relief for various violations of itemized wage statement requirements. Employees are deemed to suffer injury if the employer fails to provide a wage statement; if any of the items required are missing or incorrect, or if the employee cannot promptly and easily determine from the wage statement alone, their gross or net wages,

deductions, name and address of the employer, name of the employee and the last four digits of his or her Social Security number or employee identification number. "Promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

PAGA Penalties and Labor Code 226 Claims

California legislation enacted last year found that employers are experiencing a high volume of PAGA claims. AB1654 (Chapter 529, Statutes of 2018), signed into law on September 19, 2018, now exempts employers and employees in the construction industry and under a collective bargaining agreement from PAGA.

According to the author, "PAGA . . . has led to the unintended consequence of significant legal abuse. PAGA, in effect, encourages class action type lawsuits over minor employment issues . . . The threat of extended litigation . . . on behalf of an entire class of workers provides enormous pressure on employers to settle claims regardless of the validity of those claims."

The legislative analysis for AB1654 reported that the California agency receives approximately 6,000 new PAGA claim notices annually. Many such suits address relatively minor technical violations of the law, since it is unnecessary to establish harm to prevail in a PAGA suit.

Employers have raised concerns about the proliferation of PAGA lawsuits involving inadvertent technical errors on wage statements, when employees are paid correctly. However, recent efforts to reform PAGA have failed, with the exception of AB 1654, which only exempts the construction industry under collective bargaining agreements from PAGA.

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Employers in California should carefully review their wage statements with appropriate Legal and other advisors to confirm that they comply with all aspects of California labor law, including basic elements such as the employer's legal name and address (which can be different than a company's d/b/a or the employee's work location), pay period start and end dates, etc., but also exception situations such as termination pay, "off-cycle" manual checks and retroactive pay adjustments.

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