

## Urgency Legislation Helps Curb Frivolous PAGA Lawsuits

PROMPTED BY MILLION-DOLLAR LAWSUITS FOR TECHNICAL VIOLATIONS AND IN AN EFFORT TO INCENTIVIZE PROMPT RESOLUTION OF DISPUTES ABOUT ITEMIZED WAGE STATEMENTS, THE CALIFORNIA LEGISLATURE AMENDED THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERALS ACT OF 2004 ("PAGA"), EFFECTIVE IMMEDIATELY.

Retail grocers and other employers may now "cure" wage statement violations if the violation alleged under Labor Code §226 is a failure to state the inclusive dates of the period for which the employee is paid or the name and address of the legal entity that is the employer.

To cure these violations, an employer must provide a fully compliant wage statement to each employee for each pay period going back three years.

PAGA allows an aggrieved employee to sue his or her employer as a "private attorney general" and obtain civil penalties for violations of the Labor Code on behalf of other employees.

Before bringing such a lawsuit, an employee must first give written notice by certified mail ("PAGA Notice") to the California Labor and Workforce Development Agency and the employer about the alleged violations, including the specific provisions violated and the facts and theories supporting the violation.

Certain violations that are not enumerated as serious violations may be cured by the employer after receiving notice to avoid a civil action by the employee. Under prior law, wage statement errors were not among those that could be cured.

Now, as a result of the amendments, employers may cure name, address and inclusive date violations on wage statements by providing a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the PAGA Notice.

However, no employer may cure wage statement violations more than once in a 12-month period for the same violation contained in the PAGA Notice regardless of the location of the worksite.

PAGA lawsuits reportedly increased over 400 percent in the past 10 years due to the potential windfall and the ease of filing such cases without satisfying class action requirements. The Legislature noted that many employers are being sued over minor or technical violations such as placing the company logo on the wage statement rather than spelling out the employer name, failing to include designations such as "LLC," "LP," or "Inc." after the name, and listing only the last date of the pay period, but not the beginning date of the pay period. The purpose of this legislation is to provide relief to employers, some of whom have reportedly entered into multi-million dollar settlements.

Due to the relatively short duration of the 33-day cure period, it is important for employers to act quickly if they receive a PAGA Notice from an employee so that they may confer with counsel about curing violations in a timely manner and avoiding subsequent violations in a 12-month period.

Employers should also review their itemized wage statements and verify that they comply with California requirements. ■



Cassandra Ferrannini and Elizabeth Stallard are partners in the Employment Practice at Downey Brand LLP. They assist retail grocery employers with both employment counseling and litigation.