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PAGA After 2024 Reform: AB 2288 and SB 92 in Practice

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The 2024 PAGA amendments apply to civil actions brought on or after June 19, 2024, unless the PAGA notice was filed earlier.

The Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698) was rewritten in 2024. Governor Newsom signed Assembly Bill 2288 and Senate Bill 92 on July 1, 2024. (Lab. & Workforce Dev. Agency, PAGA.) This memorandum maps the amended provisions and how they sit alongside the leading decisions on arbitration, standing, and manageability.

I. Question Presented

As amended in 2024, how does PAGA now define standing, set and cap penalties, permit cure, and allow courts to manage representative claims, and which actions do the amendments govern?

II. Short Answer

A PAGA plaintiff must now have **personally suffered each violation alleged** within the one-year limitations period. A narrower exception applies to actions filed by qualifying nonprofit legal aid counsel. The default penalty remains $100 per aggrieved employee per pay period, with lower tiers for wage-statement and isolated violations and a $200 tier for repeat or malicious conduct. Penalties are capped at **15 percent** for employers that took all reasonable compliance steps before notice and **30 percent** for those that did so within 60 days after notice. Small employers may cure through the Labor and Workforce Development Agency (LWDA). Larger employers may request

a stay and an early evaluation conference. Aggrieved employees now receive **35 percent** of penalties. Courts may limit evidence and the scope of a claim. The amendments apply to civil actions brought on or after June 19, 2024, except where the PAGA notice was filed before that date.

III. Governing Law

A. The 2024 Legislation

AB 2288 (Stats. 2024, ch. 44) amended section 2699, effective July 1, 2024. SB 92 (Stats. 2024, ch. 45) repealed and re-enacted section 2699.3, operative October 1, 2024. Both were urgency statutes. Section 2699 was later amended by Statutes 2025, chapter 67 (Assem. Bill No. 1170), a code-maintenance bill making nonsubstantive changes, effective January 1, 2026. The provisions discussed below reflect the current text.

B. Standing

An "aggrieved employee" is a person employed by the alleged violator who "personally suffered each of the violations alleged during the period prescribed under Section 340 of the Code of Civil Procedure." (Lab. Code, § 2699, subd. (c)(1); see Code Civ. Proc., § 340, subd. (a) [one-year period].) A qualifying nonprofit legal aid organization may file an action as counsel of record for an aggrieved employee. In such an action, "aggrieved employee" means a person "against whom one or more of the alleged violations was committed." (*Id.*, subd. (c)(1).) The organization gains no standing as a party. (*Id.*, subd. (c)(2).)

C. Penalty Structure

- **Base.** $100 per aggrieved employee per pay period. (§ 2699, subd. (f)(2)(A).)
- **Wage statements.** $25 for most section 226, subdivision (a) violations if the employee could promptly and easily determine the accurate information from the statement alone. (*Id.*, subd. (f)(2)(A)(i).)
- **Isolated events.** $50 if the violation arose from an isolated, nonrecurring event lasting no longer than the lesser of 30 consecutive days or four consecutive pay periods. (*Id.*, subd. (f)(2)(A)(ii).)
- **Enhanced.** $200 if, within five years, the LWDA or a court found the policy unlawful, or if the conduct was malicious, fraudulent, or oppressive. (*Id.*, subd. (f)(2)(B).)
- **Derivative penalties.** No added penalty for violations of sections 201 to 203, non-willful section 204 violations, or non-knowing section 226 violations, beyond the penalty for the underlying unpaid wage violation. (*Id.*, subd. (i).)
- **Weekly pay.** Penalties are halved where employees are paid weekly. (*Id.*, subd. (o).)
- **Excluded claims.** No action lies for posting, notice, agency reporting, or filing requirements, except mandatory payroll or workplace injury reporting. (*Id.*, subd. (k)(2).)

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D. Caps and Judicial Discretion

If, before receiving the PAGA notice or a records request under sections 226, 432, or 1198.5, the employer "has taken all reasonable steps to be in compliance," penalties may not exceed 15 percent of those sought. (§ 2699, subd. (g)(1).) If the employer takes all reasonable steps to comply prospectively within 60 days after notice, the cap is 30 percent. (*Id.*, subd. (h)(1).) Examples of reasonable steps include payroll audits, lawful written policies, supervisor training, and corrective action. Reasonableness turns on the totality of the circumstances, including employer size and resources. The existence of a violation does not alone show a failure to take reasonable steps. (*Id.*, subds. (g)(2), (h)(2).) Neither cap applies to the $200 enhanced penalty. (*Id.*, subds. (g)(3), (h)(3).) A court may award less than the maximum, or exceed the caps, where doing otherwise would be "unjust, arbitrary and oppressive, or confiscatory." (*Id.*, subd. (e)(2).)

E. Cure

"Cure" means the employer corrects the violation, complies with the underlying statutes, and makes each aggrieved employee whole. For wages, that means three years of unpaid wages before notice, 7 percent interest, statutory liquidated damages, and reasonable lodestar fees and costs. (§ 2699, subd. (d)(1).) Wage-statement cures require corrected information or compliant statements for the prior three years. (*Id.*, subd. (d)(2).) An employer that satisfies subdivision (g) or (h) and cures pays no penalty for that violation. Other employers pay no more than $15 per employee per pay period for cured violations. (*Id.*, subd. (j).)

F. Distribution and Applicability

Penalties are split 65 percent to the LWDA and 35 percent to aggrieved employees. (§ 2699, subd. (m).) The amendments apply to civil actions brought on or after June 19, 2024, but not to actions in which the PAGA notice was filed before that date. (*Id.*, subd. (v); § 2699.5, subd. (b).)

IV. Analysis

A. Pre-Suit Procedure Under Section 2699.3

Notice is filed online with the LWDA and sent by certified mail to the employer, with a $75 fee. (Lab. Code, § 2699.3, subd. (a)(1).) An employer with fewer than 100 employees during the notice period may submit a confidential cure proposal within 33 days. The LWDA may set a conference. The employer must complete the cure within 45 days after the conference and provide a sworn notification. The LWDA verifies within 20 days. The employee may appeal an adverse cure determination to the superior court. (*Id.*, subd. (c)(2).) A separate 33-day cure applies where the only alleged violation is of section 226. (*Id.*, subd. (c)(3).) An employer may use the notice-and-cure provisions only once in 12 months for the same provisions. (*Id.*, subd. (d).)

B. Early Evaluation Conference

Other employers, once served, may request an early evaluation conference and a stay, before or with their first responsive pleading. (§ 2699.3, subd. (f)(1)(A).) Absent good cause, the court must stay the action and set a conference within 70 days. A defendant intending to cure submits a

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confidential plan within 21 days. The plaintiff then states the factual basis, the penalties claimed, fees incurred, and any demand. (*Id.*, subd. (f)(3).) The process may not exceed 30 days unless the parties agree. Submissions are protected by Evidence Code section 1152. (*Id.*, subd. (f)(10), (11).)

C. Arbitration and Standing

In *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), the Court held that the Federal Arbitration Act preempts a California Supreme Court rule "insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." It then concluded, as a matter of state law, that the plaintiff lacked standing to pursue non-individual claims once her individual claim was sent to arbitration.

The California Supreme Court disagreed on the state-law point. In *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, it held that "an order compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA." The court noted it is "not bound by the high court's interpretation of California law." It accepted a procedure in which the trial court may exercise its discretion to stay the non-individual claims pending arbitration under Code of Civil Procedure section 1281.4.

Adolph applied the earlier definition, which required that "one or more" violations be committed against the plaintiff. Current subdivision (c)(1) requires that the plaintiff have personally suffered "each" violation alleged. *Adolph* preserves standing after an order compelling arbitration. The amended text separately requires that the plaintiff have personally suffered each violation alleged.

D. Manageability

In *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582, the court held that trial courts "lack inherent authority to strike PAGA claims on manageability grounds." It noted that courts "may use a vast variety of tools to efficiently manage PAGA claims." It left open whether due process could ever support striking a claim. Section 2699, subdivision (p), now provides that the court "may limit the evidence to be presented at trial or otherwise limit the scope of any claim" to ensure the claim can be effectively tried. The statute speaks to limiting a claim. It does not expressly authorize dismissing one.

V. Practical Considerations

- **Date the notice.** The June 19, 2024 notice date determines which version of the statute governs.
- **Plead violation by violation.** Outside actions filed by qualifying legal aid counsel, standing now depends on personal injury from each violation alleged.
- **Document compliance.** Audits, policies, and training before notice support the 15 percent cap; prompt steps within 60 days support the 30 percent cap.
- **Elect the right track.** Headcount below 100 opens LWDA cure; other employers must request the early evaluation conference at or before the first responsive pleading.

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- **Arbitration.** After *Adolph*, compelled arbitration of the individual claim does not defeat standing for non-individual claims. A discretionary stay under section 1281.4 is the expected course.

VI. Authorities Cited

- Lab. Code, § 2698
- Lab. Code, § 2699
- Lab. Code, § 2699.3
- Lab. Code, § 2699.5
- Code Civ. Proc., § 340
- Code Civ. Proc., § 1281.4
- Evid. Code, § 1152
- *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022)
- *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104
- *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582
- Labor & Workforce Development Agency, Private Attorneys General Act (PAGA)

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