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INSIGHT · EMPLOYMENT LAW

Q3 2024 Legal Review: The California PAGA Compromise — How AB 2288 & SB 92 Restructure Labor Enforcement

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California's historic PAGA reform legislation (AB 2288 & SB 92) restructured penalty caps, employer cure rights, and employee recovery percentages.

In the third quarter of 2024, California business groups, organized labor, and legislative leaders reached an historic compromise on the Private Attorneys General Act (PAGA), enacting Assembly Bill 2288 and Senate Bill 92. The emergency legislation removed a business-backed repeal initiative from the November 2024 ballot while enacting the most structural reforms to PAGA (Labor Code §§ 2698 et seq.) since its inception in 2004.

I. The Core Reforms of AB 2288 and SB 92

Effective immediately upon signing, AB 2288 and SB 92 restructured the penalty landscape and procedural mechanics of PAGA litigation:

- **Standing Requirement:** The plaintiff must have personally experienced each specific violation alleged within the one-year statute of limitations, curbing the prior practice of asserting broad representative claims for unexperienced infractions.
- **Employee Recovery Increase:** The share of civil penalties allocated to aggrieved employees increased from 25% to 35%, with the state's share decreasing from 75% to 65%.
- **Substantial Penalty Caps:** Penalties are capped at 15% of the statutory maximum if an employer took 'all reasonable steps' to comply prior to receiving a PAGA notice, or capped at 30% if reasonable cure steps are taken within 60 days of notice.

- **Judicial Manageability:** The legislation explicitly codified courts' authority to limit the scope of claims or manage representative actions at trial, resolving the conflict between *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582 and federal manageability standards.

II. The Expanded Employer Cure Mechanism

A central feature of the reform is the introduction of robust statutory cure procedures under Labor Code § 2699.3. Employers with fewer than 100 employees can submit confidential cure proposals to the Labor and Workforce Development Agency (LWDA), while larger employers can petition the superior court for an early settlement conference and stay of litigation.

If an employer successfully cures the alleged wage-and-hour violations (such as correcting wage statements under Labor Code § 226 or paying back overtime with statutory interest), no civil penalties may be assessed, and plaintiff's attorney fee recovery is strictly limited.

III. Defense and Pleading Strategy for 2024–2026

For California employment litigators, the 2024 reform fundamentally altered case economics:

- **Proactive Wage Audits:** Employers should conduct annual, attorney-client privileged wage audits to establish 'all reasonable steps' compliance defenses before receiving PAGA notices.
- **Early Stay & Cure Motions:** Defense counsel must evaluate cure eligibility within the first 60 days of receiving a PAGA letter or complaint, utilizing the early court stay mechanism under § 2699.3.
- **Standing Demurrers:** Plaintiffs' complaints that assert sweeping multi-violation PAGA claims without alleging personal experience of each violation are now vulnerable to demurrers and motions to strike.

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