



PAGA

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PAGA EARLY EVALUATION CONFERENCE

PROCEDURE, PRACTICE, AND IMPACT



WEBINAR | APRIL 21, 2026

Hon. Paul Burdick (Ret.) | Phyllis W. Cheng, Esq. | Hon. James Lambden (Ret.)

THE SPEAKERS



[Hon. Paul Burdick \(Ret.\)](#)



[Phyllis W. Cheng, Esq.](#)



[Hon. James Lambden \(Ret.\)](#)



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OVERVIEW

1. Background on PAGA
2. 2024 PAGA Reforms
3. Early Evaluation Conference
4. 2026 Proposed PAGA Regulations
5. Impact Going Forward
6. Questions and Answers

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POLL 1

Please let us know who you are.

- Plaintiff-side attorney
- Defense-side attorney
- Employee
- Employer
- Neutral (mediator, arbitrator, or retired judge)
- Other:

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POLL 2

What proportion of your practice is devoted to PAGA and/or wage-and-hour matters?

- None
- Less than 25%
- 25% to 50%
- More than 50%
- Other:

The letters 'P', 'A', 'G', and 'A' are stacked vertically in a large, white, sans-serif font. They are positioned over a colorful, abstract background that resembles a painting with various shades of blue, green, yellow, and red.



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BACKGROUND ON PAGA



WHAT IS PAGA

Enacted in 2004, the California Labor Code Private Attorneys General Act ([PAGA](#)):

- Deputizes aggrieved employees to file representative lawsuits.
- To recover civil penalties for Labor Code violations.
- On behalf of themselves, other employees, and the State of California.

Scope: Unlike class actions, PAGA lawsuits do not require certification and can be harder for employers to defeat through arbitration.

Statute of Limitations: Generally, claims must be filed within one year of the alleged violation.

PAGA PROCEDURE

Those who intend to pursue PAGA claims must follow the requirements specified in [Labor Code sections 2698–2699.8](#).

To pursue a PAGA claim, an employee must follow a specific process:

- 1. Notice:** File a written notice of alleged violations via the [DIR PAGA Filing Portal](#) and send a copy to the employer via certified mail.
- 2. Waiting Period:** Wait for the Labor & Workforce Development Agency (LWDA) to decide whether it will investigate (typically 60–65 days).
- 3. Filing:** If the agency declines to investigate or fails to respond within the statutory timeframe, the employee may file a lawsuit in superior court.

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COMMON PAGA VIOLATIONS

- **Meal and Rest Break Violations:** Failing to provide 30-minute lunch breaks or mandatory 10-minute rest breaks. (Lab. Code §§ [226.7](#), [512](#)).
- **Wage Statement (Pay Stub) Violations:** Failing to include accurate information such as employer name/address, total hours worked, or net wages. ([Lab. Code § 226](#)).
- **Unpaid Wages and Overtime:** Failing to pay minimum wage, improper overtime calculations (1.5x), or failure to pay all wages upon termination. ([Lab. Code § 226](#)).
- **Misclassification:** Improperly classifying employees as independent contractors to avoid benefits, taxes, and labor law protections. ([Lab. Code § 226.8](#)).
- **Expense Reimbursement:** Failure to reimburse employees for work-related expenses, such as phone usage or travel. ([Lab. Code § 2802](#)).
- **Safety Violations:** Violations of Cal/OSHA standards, including lack of safety devices or inadequate injury prevention. ([Lab. Code § 6314](#)).

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PAGA AWARDS AND LITIGATION TRENDS

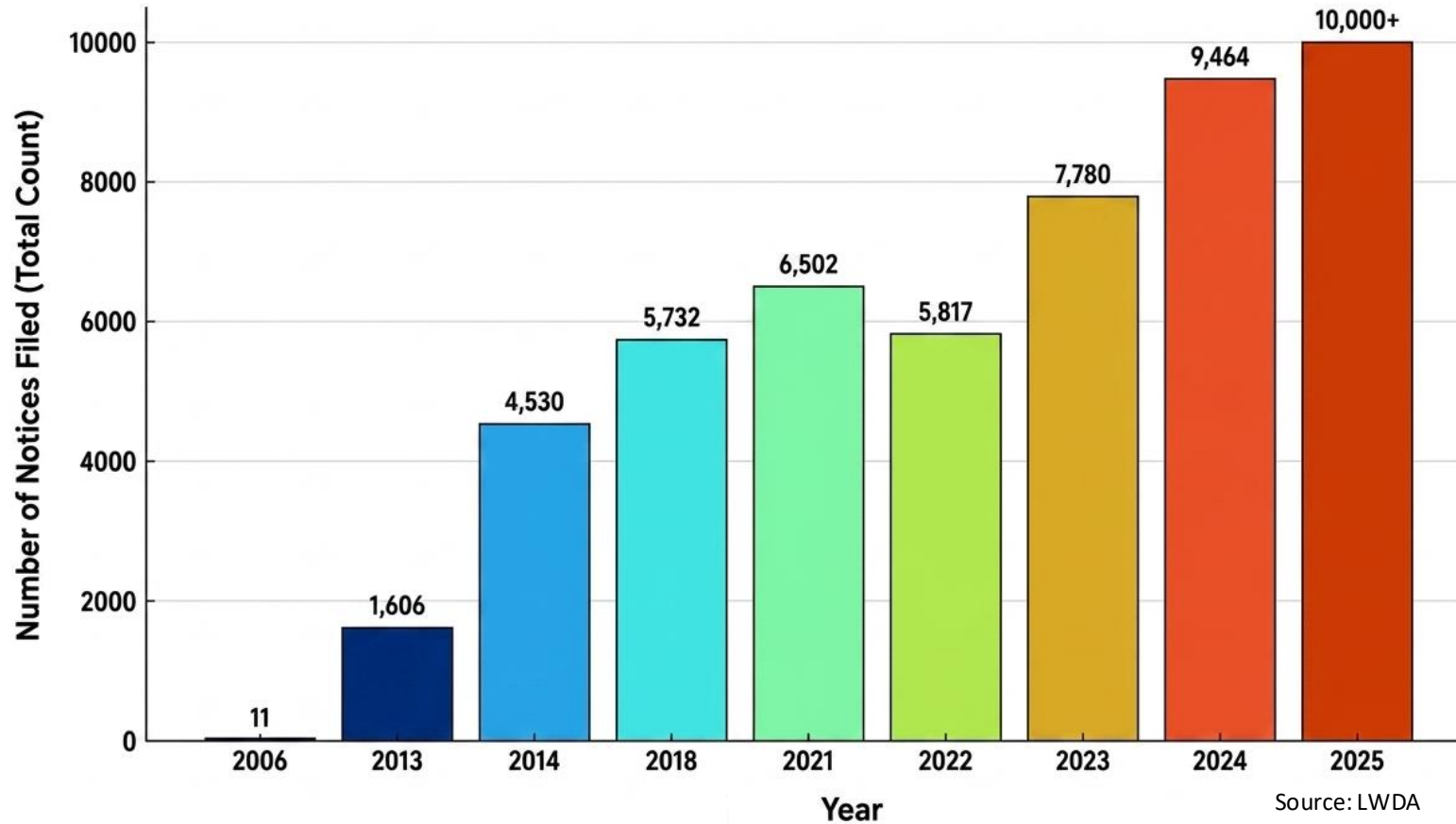
- **Rapid Growth:** PAGA lawsuits increased by over 400% between 2005 and 2013. Since then, lawsuits have increased by over 1000%, with the Labor and Workforce Development Agency (LWDA) receiving over 5,000 PAGA notices annually.
- **Large Settlements:** Cases have frequently resulted in significant awards, sometimes in the millions of dollars.
- **Median Awards:** LWDA data indicate a median penalty of \$229,500 awarded by courts, with a median of \$113.53 in penalties awarded per pay period.
- **Penalty Structure (Pre-July 2024):** Previously, penalties were generally \$100 per employee per pay period for initial violations and \$200 for subsequent violations.
- **Distribution (Pre-July 2024):** 75% of the penalties recovered went to the LWDA, while 25% went to the affected employees.

Sources: LWDA.

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GROWTH OF PAGA CASES

PAGA Notices Filed: 2006 – 2025 Filing Trends



Source: LWDA

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CONCENTRATION OF PAGA NOTICES FILED BY FIRMS

During FY 2024-25, PAGA notices received by LWDA showed:

- Five law firms filed a total of 2,086 PAGA notices—about one-quarter (24%) of all PAGA notice filings;
- Three law firms filed on average more than one PAGA notice per day, with one filing 605 notices, another filing 535, and the third filing 409;
- Four law firms filed more than 300 PAGA notices;
- Eight law firms filed more than 200 PAGA notices;
- Five attorneys filed a total of 1,571 PAGA notices, accounting for about 18%, or almost one-fifth, of all PAGA notices;
- Ten attorneys filed a total of 2,192 PAGA notices, accounting for about one-quarter (25%) of all PAGA notices; and
- One attorney filed 597 PAGA notices and another filed 368.

Source: [LWDA](#)

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MISMATCH OF PAGA NOTICES AND PAGA LAWSUITS

During FY 2024-25, LWDA found:

- One law firm filed 409 PAGA notices but reported filing only 63 PAGA lawsuits based on these notices;
- One law firm filed 230 PAGA notices but reported filing only 10 PAGA lawsuits;
- One law firm filed 222 PAGA notices but reported filing only 5 PAGA lawsuits; and
- One law firm filed 125 PAGA notices but reported filing only 2 PAGA lawsuit.

Source: [LWDA](#)

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2024 PAGA REFORMS



2024 PAGA AMENDMENTS

- A "battle of the ballot" to repeal the PAGA statute drove a negotiated deal for the 2024 reform compromise that modified PAGA to address employer concerns regarding abusive litigation, while preserving its core function for employee protection.
- Signed into law on July 1, 2024 ([AB 2288](#) and [SB 92](#)), the reforms apply to cases filed on or after June 19, 2024, to prevent a full repeal initiative from appearing on the November 2024 ballot.

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KEY CHANGES TO PAGA ACTIONS

[Labor Code section 2699](#), et seq., as amended, applies to claims where PAGA notice is sent to LWDA on or after June 19, 2024:

- **Stricter standing requirements** ([Lab. Code § 2699\(c\)\(1\)](#)): new definition of “aggrieved employee.”
- **Change in allocation of penalties** ([Lab. Code § 2699\(m\)](#)): from 25% to 35% “aggrieved employees,” and from 75% to 65% to LWDA.
- **Reduced penalties** ([Lab. Code § 2699\(f\)\(2\)\(A\)\(i\)](#)): for wage statement violations
- **Penalty caps** ([Lab. Code § 2699\(g\)](#)): for employer’s good faith compliance.
- **Expanded court’s management authority** ([Lab. Code § 2699\(p\)](#)): authorizes limitation of evidence at trial or limit the scope of any claim for effective trial.
- **Added early evaluation conference** ([Lab. Code § 2699.3\(c\)\(2\)\(B\)](#)) (small employers <100 employees with LWDA), and [Lab. Code § 2699.3\(f\)\(1\)\(A\)](#) (large employers ≥100 employees with neutral evaluators)).
- **Expanded cure options** ([Lab. Code § 2699\(c\)](#)): for claims filed on or after October 1, 2024.

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LAB. CODE § 2699.3 PRE-SUIT REQUIREMENTS

Section [2699.3](#) creates a mandatory pre-litigation notice, agency review, and increasingly robust employer cure + early evaluation system that must be exhausted before a PAGA action can proceed.

1. Mandatory pre-suit notice: written notice to LWDA and employer (facts & legal theories required).
2. \$75 filing fee (waivable).
3. Notice must include specific code sections violated, facts, and legal theories.
4. This is a strict administrative exhaustion requirement.

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THREE DISTINCT TRACKS UNDER § 2699.3

1. Most common PAGA claims ([Labor Code § 2699.3\(a\)](#))

- Standard LWDA notice + waiting process.
- No built-in cure mechanism (historically stricter).

2. Workplace Safety (Cal/OSHA) ([Labor Code § 2699.3\(b\)](#))

- Goes through Division of Occupational Safety and Health (Cal/OSHA).
- If agency issues citation, Employee cannot bring PAGA claim.
- If no citation, employee may challenge or proceed depending on outcome.

3. “All Other Violations” + New Cure Process ([Labor Code § 2699.3\(c\)](#))

- Employer cure option.
- Small employers (<100 employees): 33 days to propose a cure.

- **LWDA may:** approve, request conference, and/or set deadlines.
- **Cure Requirements:** fix violation, pay wages (if applicable), and/or provide documentation (e.g., payroll audit).
- **If cure is accepted, employee cannot proceed with lawsuit.**

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OTHER CONSIDERATIONS

Special Fast-Track Cure (Wage Statement Violations – [Lab. Code § 226](#))

- Employer gets **33 days to cure**
- If cured:
 - **✗** No PAGA claim allowed
- If disputed:
 - LWDA reviews

Limits on Repeated Use of Cure

- Employer can only use cure:
 - **Once per 12 months per violation type**

Tolling of Statute of Limitations

- Time spent in:
 - Notice
 - Agency review
 - Cure process

Settlement Oversight (Especially Safety Claims)

- Court must approve settlements
- Must be:
 - **At least as protective as state/federal law**
- Agency can weigh in

Confidentiality Protections

- Cure proposals + evaluation materials:
 - Protected under [Evid. Code § 1152](#)
 - Not admissible

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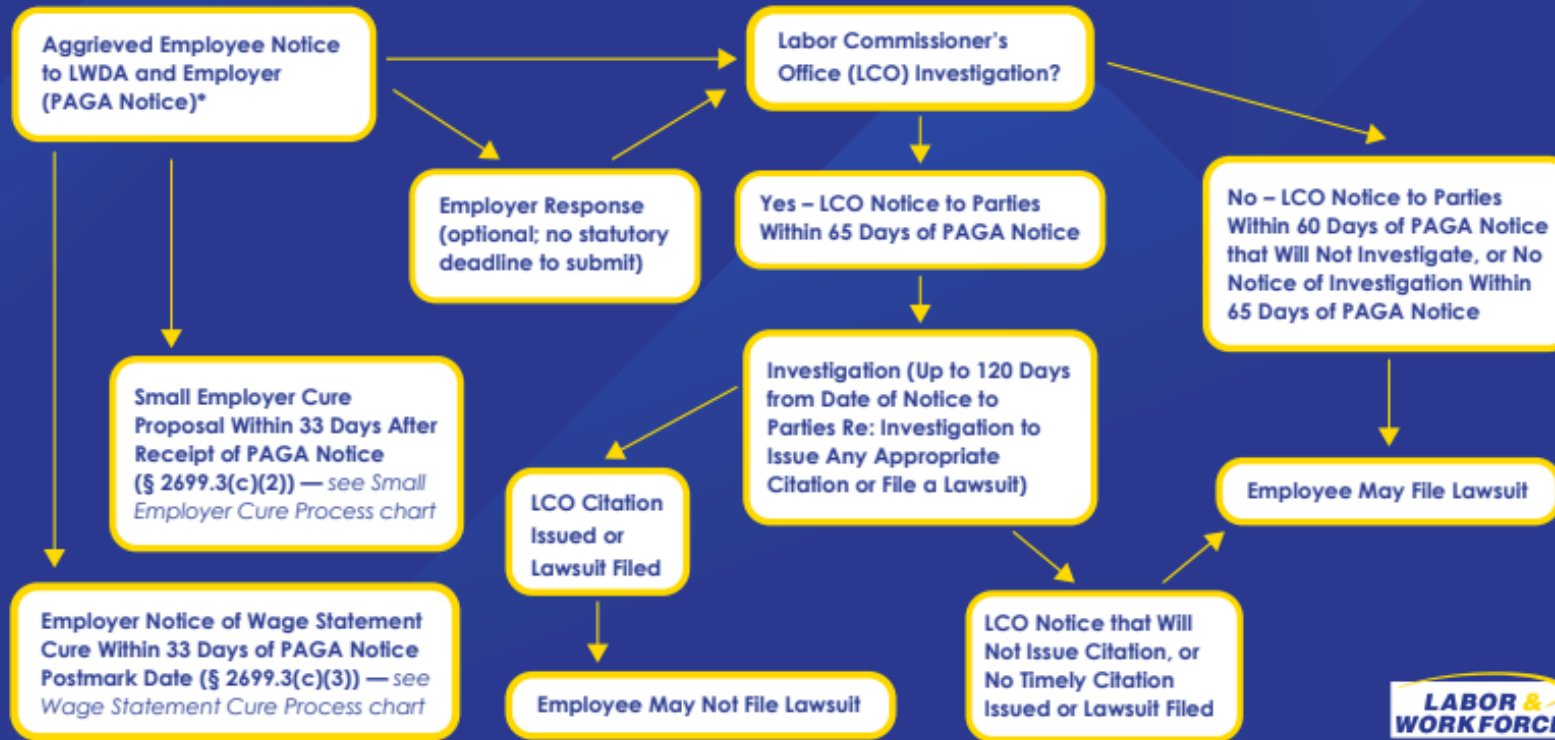
REMEDY AND PROCEDURAL CHANGES

- **Notice/Response** ([Labor Code § 2699.3](#)): Directs that [PAGA notices be filed online](#) with the LWDA.
- **Statute of Limitations** ([Code of Civil Procedure § 340](#)): Codifies a one-year statute of limitations for PAGA claims.
- **Penalty Caps** ([Labor Code § 2699\(c\)](#)): Caps penalties at 15% for employers who took "all reasonable steps" to comply before receiving a notice, and introduces lower default penalties (\$50-\$100) for violations.
- **Wage Statement Caps** ([Labor Code § 2699\(e\)](#)): Imposes specific caps (\$25) on wage statement violations if the employee was not misled or could easily determine the correct information.
- **Injunctive Relief** ([Labor Code § 2699\(g\)](#)): Formally allows for injunctive relief (mandating changes in policy) as a remedy.

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LWDA – PAGA NOTICE AND INVESTIGATION PROCEDURES

Labor Code Violations Subject to the Jurisdiction of the Labor Commissioner's Office [Lab. Code, § 2699.3, subds. (a), (c)]



* A PAGA notice must be filed electronically with the LWDA using the online PAGA filing portal, available at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>, and sent to the employer by certified mail. This chart illustrates the administrative procedures applicable to alleged Labor Code violations under subdivisions (a) and (c) of Labor Code section 2699.3 and subject to the jurisdiction of the Division of Labor Standards Enforcement, also commonly referred to as the Labor Commissioner's Office. For administrative procedures applicable to alleged safety and health violations under subdivision (b) of Labor Code section 2699.3, please see the separate chart illustrating Cal/OSHA investigation procedures.

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EARLY EVALUATION CONFERENCE



POLL 3

Have you represented a client in a PAGA matter under the below procedures?

- PAGA small employer process (<100 employees) before LWDA
- PAGA large employer process (≥ 100 employee) before a neutral evaluator
- Mediation with a mediator outside the PAGA early evaluation process
- In court only
- None of the above



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CURE PROVISIONS FOR SMALL EMPLOYERS

Cure provisions for employers of less than 100 employees ([Lab. Code § 2699.3\(c\)\(2\)\(A\) & \(c\)\(3\)](#)):

- Small employer's confidential cure proposals are directed to and administered by the LWDA.
- Employer to provide written notice of cure to LWDA and employee within 33 days of receipt of the employee's notice. Note: deadlines to determine extent and sufficiency of cure, and effectuate agreed cure, are short.
- Agency's determination of cure as bar to civil action ([Lab. Code § 2699.3\(c\)\(2\)\(D\)](#)).

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EARLY EVALUATION CONFERENCE FOR LARGE EMPLOYERS

Larger Employers (100 employees or more) may request “Early Evaluation and Stay of Action” ([Lab. Code § 2699.3\(f\)\(1\)\(A\)](#)):

- [Lab. Code § 2699.3\(f\)](#) sets out specific procedures for early evaluation conferences.

Note: Confidentially of the process- All statements or evidence submitted for the purpose of an early evaluation conference “shall be subject to” [Evid. Code § 1152](#)'s provision on offers to compromise. ([Lab. Code § 2699.3\(f\)\(10\)](#)).

KEY PROVISIONS OF EEC

1. Employer may file a **request for an early evaluation conference** and **request a stay of court proceedings**:
 - prior to or simultaneous with that defendant's responsive pleading or other initial appearance in the action ([Lab. Code § 2699.3\(f\)\(1\)\(A\)](#)); and
 - the court “shall stay the proceedings” “absent good cause for denying defendant's request in whole or in part.” ([Lab. Code § 2699.3\(f\)\(3\)](#)).

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KEY PROVISIONS OF EEC

2. The Early Evaluator:

- The early evaluation conferences “shall be conducted by a judge or commissioner **or such other person knowledgeable about and experienced with issues arising under the code whom the court shall designate.**” ([Lab. Code § 2966.3\(f\)\(12\).](#))

KEY PROVISIONS OF EEC

3. Upon issuance of the stay the court will ([Lab. Code § 2699.3\(f\)\(3\)](#)):

- **Schedule a mandatory early evaluation conference** as soon as possible after the date of the order, but no later than **70 days**;
- **Order defendant “to submit confidentially to the neutral evaluator and serve on the plaintiff,”** within **21 days**, the employer's proposed plan to cure the violations;
- **Order defendant that is disputing any alleged violations to submit to the neutral evaluator and serve on plaintiff a confidential statement** that includes, for use solely for the early evaluation conference, the **basis and evidence** for disputing those alleged violations;
- **Order the parties to appear** at the conference;
- **Order plaintiff to submit**, no more than **21 days** after service of **defendant's proposed cure plan**, a **confidential statement with plaintiff's positions** on the case, including matters such as damages, fees incurred, and a settlement demand.

After the above statements are submitted, **the evaluator is to decide whether to accept or reject** the defendant's proposed plan to cure ([Lab. Code § 2699.3\(f\)\(4\)](#).)

KEY PROVISIONS OF EEC

4. **Time limits** for early evaluation completion - The early evaluation process “shall not extend beyond **30 days** unless parties mutually agree to extend time.” ([Lab. Code § 2699.3\(f\)\(11\).](#))
5. **“The Purpose of the Evaluation Conference** shall include, but not be limited to, evaluation of all of the following”:
 - i. Whether any of the alleged violations occurred and if so, whether the defendant has cured the alleged violations.
 - ii. The strengths and weaknesses of the plaintiff's claims and the defendant's defenses.
 - iii. Whether plaintiff's claims, including any claim for penalties or injunctive relief, can be settled in whole or in part.
 - iv. Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute. ([Lab. Code § 2699.3\(f\)\(1\)\(B\).](#))

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KEY PROVISIONS OF EEC

6. Early Evaluation Resolution – or - Failure to Resolve:

- a. If all parties agree that the matter has been cured, they must submit a joint statement to the court providing notice of the resolution. The “court shall treat the parties' submission as a proposed settlement ([Lab. Code § 2699.3\(f\)\(5\)-\(6\).](#))
- b. If the evaluator or plaintiff do not agree that the matter has been appropriately cured, the employer may file a motion to request the court to approve the cure and submit evidence showing correction of the alleged violations. The Court may request further briefing and evidentiary submissions ([Lab. Code § 2699.3\(f\)\(9\).](#))

7. Not exclusive mechanism for employer to cure any violations and does not prevent parties from agreeing to their own mediation process ([Lab. Code § 2699.3\(14\).](#))

MATTERS NOT ADDRESSED

- No provision made for submission of evaluator's report.
- No provision made for who bears responsibility for costs (evaluator's fees) associated with the evaluation process.

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2026 PROPOSED PAGA REGULATIONS



LWDA PAGA RULEMAKING

LWDA's proposed rulemaking:

- Establishes requirements for filing PAGA notices with the Agency;
- Provides guidance concerning the investigation and early resolution procedures administered by the Agency; and
- Implements statutory litigation-reporting obligations PAGA plaintiffs owe to the Agency.

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LWDA PAGA RULEMAKING

Public Notice Materials:

- [Notice of Proposed Regulatory Action](#) – contains information about the proposed regulatory changes and procedural information.
- [Express Terms of the Proposed Regulatory Text](#) – the text of the proposed regulations.
- [Initial Statement of Reasons](#) – explains why the proposed regulatory changes are being made.

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LWDA PAGA RULEMAKING

Timeline:

- February 6, 2026: Notice of this proposed rulemaking.
- March 23, 2026: Written comment period closed.
- April 9, 2026: Public hearing via Zoom.
- Summer-Fall 2026: Regulations become final.

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PROPOSED PAGA REGULATIONS TABLE OF CONTENTS

1. Problem Statement

- 1.1. Overview and Background of the Law
- 1.2. Prelitigation Administrative Notice Requirements
 - 1.2.1. Notice Requirements, Generally
 - 1.2.2. New Early Resolution Procedures
 - 1.2.3. New Standing Rules
- 1.3. Trends and Practices Frustrating PAGA's Purpose
- 1.4. Addressing PAGA Notice Filing Problems

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2. Prelitigation Administrative Procedures

2.1. Investigations

2.2. Cure Procedures

2.2.1. Small Employer Cure Procedures (§ 2699.3, subd. (c)(2))

2.2.2. Wage Statement Cure Procedures (§ 2699.3, subd. (c)(3))

3. Litigation Reporting Obligations (§ 2699, subd. (s))

4. Anticipated Benefits

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PROPOSED PAGA REGULATIONS TABLE OF CONTENTS

5. Section-by-Section Explanation for Adoption

5.1. Proposed Subchapter 1. Scope and Application

5.2. Proposed Subchapter 1.5. Filing and Service

5.3. Proposed Subchapter 2. Pre-Litigation Notice and Investigation of Claims

5.4. Proposed Subchapter 3. Small Employer Cure Procedures

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IMPACT GOING FORWARD



IMPACT GOING FORWARD

Case and related cases pending before the California Supreme Court:

[Leeper v. Shipt, Inc.](#) 107 Cal. App. 5th 1001 (2024), review granted, 2025 WL 1132271(Apr. 16, 2025); S289305/B339670

Review granted on court's own motion after denial of depublication. (1) Does every Private Attorneys General Act (Cal. Lab. Code, § 2698 et seq.) (PAGA) action necessarily include both individual and non-individual PAGA claims, regardless of whether the complaint specifically alleges individual claims? 2.) Can a plaintiff choose to bring only a non-individual PAGA action? Fully briefed.

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IMPACT GOING FORWARD

California Budget Deficit:

- As of January 2026, Governor Gavin Newsom's [proposed 2026-27 budget](#) projects a \$2.9 billion California budget deficit.
- Despite the lower immediate projection, the Legislative Analyst's Office ([LAO](#)) projects structural deficits could grow significantly, potentially reaching \$35 billion annually by 2027-28.

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QUESTIONS AND ANSWERS



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THANK YOU

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