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California reforms worker protection law after labor, business deal removes ballot measure

By Eric He

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This Pro Bill Analysis covers two bills: AB 2288 and SB 92.

Labor and business interests in California came together last month to strike a deal to reform the Private Attorneys General Act (PAGA), which allows for aggrieved workers to sue employers on behalf of the state over allegations such as failing to provide breaks or improper overtime calculations but has been criticized as driving undue litigation.

The legislative deal, reflected in AB 2288 and SB 92, was signed into law by Gov. Gavin Newsom on July 1 and took effect immediately. As a result, a pro-business initiative that would have repealed the 2004 law was pulled from the November ballot.

The bipartisan bills, authored by Assemblymember Ash Kalra (D-San Jose) and state Sen. Tom Umberg (D-Santa Ana), aim to fix loopholes in PAGA that both sides said have led to frivolous litigation. The agreement incorporates priorities for both sides, increasing penalties on employers who violate labor laws but also reducing the number and scope of lawsuits that can be brought against employers.

Newsom, in a statement, praised both sides for coming to the table.

“This reform is decades in the making — and it’s a big win for both workers and businesses,” Newsom said after signing the bills. “It streamlines the current system, improves worker protections and makes it easier for businesses to operate.”

WHAT’S IN THE BILL?

This Pro Bill Analysis is based on the text of AB 2288 as signed by the governor on July 1.

The bill amends the state’s labor code to make adjustments to the Private Attorneys General Act, in conjunction with SB 92.

The measure increases the amount of money allocated to employees to 35 percent of the civil penalty, up from 25 percent. It accordingly decreases the amount going to the state’s Labor and Workforce Development Agency to 65 percent from 75 percent. These funds are supposed to be used for enforcing labor laws, and educating employers and employees about their rights (Sec. 1).

Under the bill, an “aggrieved employee” must have “personally suffered the violations” alleged in a claim. It also limits PAGA claims to alleged violations that occurred within the past year, per the state’s Code of Civil Procedure. Previously, there was no time limit.

The bill allows for a nonprofit legal organization with at least five years of experience in PAGA lawsuits to file civil actions on behalf of aggrieved employees. The organization would not be a party in the case.

The proposal contains a “cure” provision: the employer can correct the alleged violation by paying back missed wages from the past three years plus 7 percent interest, any liquidated damages and attorney’s fees. The bill explicitly allows for employers to address alleged violations by paying the employee what is “reasonably” owed as determined by the Labor and Workforce Development Agency or a court.

If the employer fails to properly provide its name and address on a paystub, per Section 226 of the Labor Code, the employer must provide the correct information in writing to the employee. For other paystub-related violations like not showing gross wages earned or hours worked, the employer must provide a fully compliant, itemized wage statement for each pay period in question.

The bill allows courts to issue a civil penalty or award injunctive relief to compel employers to implement changes in the workplace, just as the Labor and Workforce Development Agency would be able to in the case of a PAGA violation.

The new civil penalty structure is as follows if no amount is explicitly set:

— $500 if the person was not an employer at the time of the violation

— $200 for each aggrieved employee if the Labor and Workforce Development Agency or a court determines any unlawful, malicious, fraudulent or oppressive conduct by the employer related to the violation.

— $100 for each aggrieved employee if a person has one or more employees

— $50 if the alleged violation was determined to be an isolated, non-recurring event that was shorter than the lesser of 30 consecutive days or four consecutive pay periods

— $25 if the aggrieved employee is able to determine basic paystub information "promptly and easily" from the wage statement alone, or in the case of disclosing an employer's identity, if the employee would not be "confused or misled" by who their employer is.

— No penalty if the employee makes an allegation toward the Labor and Workforce Development Agency.

The measure gives employers a chance to reduce the fine to 15 percent of the requisite penalty if they "take all reasonable steps" to comply prior to receiving notice of a PAGA violation, and 30 percent if they comply within 60 days of receiving the notice, except if the violation is determined to be unlawful, malicious, fraudulent or oppressive.

"All reasonable steps" includes conducting or initiating payroll audits, disseminating lawful written policies, training supervisors on compliance with the labor code and wage order compliances or taking "appropriate" corrective action regarding supervisors. Whether an employer took a "reasonable step" will be determined by the circumstances, size and available resources, as well as the severity and nature of the alleged violations. The existence of a violation alone is not enough to determine that reasonable steps were not taken.

Employees are not able to collect fines if they were laid off or quit their job, or additional fines if the employer did not willfully or intentionally withhold a paycheck or paystub. The bill allows courts to reduce the penalty if there are multiple violations for the same conduct or omission.

Employers that present "reasonable steps" and cure a violation are not liable for civil penalties. Otherwise, they could be required to pay up to $15 per employee per pay period within a year of the violation.

Penalties are halved if the employee's pay period is weekly rather than biweekly or semi-monthly. Under prior law, the penalties applied per pay period.

Superior courts are able to limit evidence or the scope of the claim to ensure that it is effectively tried, and courts are also able to consolidate or coordinate civil actions if there are overlapping allegations.

The bill only applies to civil actions related to PAGA brought forward on or after June 19, 2024 (Sec. 1).

The measure took effect immediately, stating that an urgency clause is necessary to further the intent of PAGA and "to protect workers from labor violations and address a pending ballot measure" (Sec. 3).

This Pro Bill Analysis is based on the text of SB 92 as signed by the governor on July 1.

The bill amends the state's labor code to make adjustments to the Private Attorneys General Act, in conjunction with AB 2288 (Sec. 1).

The measure places a timetable of 60 days on the Labor and Workforce Development Agency to notify the employer and employee if they do not qualify or do not intend to pursue a PAGA-related allegation. After 65 days, the employee is able to file a lawsuit.

The agency also has 65 days to inform stakeholders if it intends to investigate the allegation, and issue any appropriate citation within 120 days. If no citation is issued, the employee can file a lawsuit. Under existing law, an employer has 33 days to cure the alleged violation, or the employee could file a PAGA lawsuit.

The measure prevents employers from using the cure provision for the same Labor Code violations more than once per year.

Following a PAGA-related lawsuit, the bill allows employers with over 100 employees to request an "early evaluation conference" and ask the court to stay the proceedings during the evaluation. The evaluation includes:

— Whether the alleged violations occurred, and if so, whether the employer cured the violation

— The strength of arguments from both the plaintiff and defendant

— Whether the parties can reach a settlement

— Whether other information could result in a resolution

A defendant can request an early evaluation conference, along with a statement on whether they intend to cure the alleged violation and what allegations they dispute.

The measure then describes the process for the early evaluation conference, which is required to be scheduled within 70 days and overseen by a judge or another neutral evaluator. The employer has 21 days to file a proposal to cure the violation. If they dispute the violation, an employer has to send the basis and evidence to both the evaluator and the employee.

The employee also has to submit a proposal within 21 days containing:

— The factual basis for the allegations

— The penalties they seek to claim for each violation and the reason

— The amount of attorney's fees incurred and claimed

— Request for a settlement, if applicable

— Whether they accept the employer's proposal to cure the alleged violations

If the evaluator accepts the employer's proposal, the employer has 10 days to present evidence that the violation has been cured or else the court can terminate the stay and the evaluation process. Once all parties agree that the violation has been cured, they will have to submit a statement to the court with the terms of the agreement. This is treated as a proposed settlement unless there are other allegations.

The measure allows a court to issue a penalty lower than the maximum amount specified, and also considers the fact that the violations were cured without the need for extended litigation when considering the amount of the fine to the employer.

If the evaluator or employee disagrees that the employer cured the violation, the employer can file a motion requesting that the court approve the cure, along with evidence that the violation was cured. The court can also ask for additional evidence.

The early evaluation process does not need to extend beyond 30 days unless there is a mutual agreement to extend it. Any evidence submitted and offers of compromise are subject to the state's Evidence Code.

The measure does not prohibit an employer and employee from independently agreeing to a solution or conducting an evaluation conference under different terms. Courts are able to order appropriate injunctive relief and approve settlements on their own merit.

For companies with more than 100 employees, the bill applies only to lawsuits filed beginning June 19, 2024 and companies of that size are only able to request an early evaluation conference until October 1, 2024 (Sec. 1).

Beginning in October, Section 2 of the bill takes effect and addresses a cure provision for companies with fewer than 100 employees (Sec. 2).

These small or mid-size companies are able to submit a proposal to cure the alleged violations within 33 days. Within 30 days, the parties will meet with the Labor and Workforce Development Agency to determine if the cure is "sufficient."

The agency will determine, at the meeting, whether and how the employer would have to compensate unpaid wages — including 7 percent interest. The payment will be put into escrow or otherwise secured. If the agency deems the cure "not facially sufficient" or doesn't act on the proposal, the employee can proceed with a lawsuit after 65 days unless the agency provides an extension to up to 120 days.

If the cure proposal is accepted, the employer has 45 days to complete the cure and provide a sworn notification, along with a payroll audit and check register — a record of transactions — if necessary. The agency has 20 days to verify the cure. Once it does, there will be a hearing within 30 days to formalize the cure. If this process is completed, the employee will not be able to file a lawsuit, but is able to appeal the decision to a superior court.

The measure makes clear that a cure proposal would be treated the same as a confidential settlement and not indicate an admission of liability by the employer. Employers and employees can also independently agree to their own agreements to settle the allegations.

If the only allegation by the employee is over paystub inaccuracies, the measure specifically mentions that the employer is able to cure the violation within 33 days to prevent a lawsuit, but the employee is able to dispute the cure per the provisions of the bill (Sec. 2).

The provisions outlining certain steps that an employee and the Labor and Development Workforce Agency must take prior to a PAGA lawsuit being filed as described in subdivision (a) of Section 2699.3 of the Labor Code will not apply to the following Labor Code violations (Sec. 3):

— Disputes over paystubs, per Section 226

— If the employer mismanages an employee's withholdings, per Section 227

— If vacation time is not paid out after termination, per Section 227.3

— Overtime pay disputes, per Section 510

— Meal time not provided, per Section 512

— Requesting make up work time, per Section 513

— Disputes over minimum wage or payment from a lawsuit over minimum wage or overtime pay, per Section 1194, 1197 and 1197.1

— Payment from losses due to an employer not providing the necessary "ordinary care" or expenses incurred at the fault of the employer, per Section 2800 and Section 2802.

The measure contends that it is necessary to limit public access to statements made during negotiations, evaluations of claims and assessments of cure violations to "facilitate early resolution of claims and encourage employers to take prompt action to make aggrieved employees whole" (Sec. 4).

The bill took effect immediately, stating that an urgency clause is necessary to further the intent of PAGA and "to protect workers from labor violations and address a pending ballot measure" (Sec. 7).

WHO ARE THE POWER PLAYERS?

The **California Chamber of Commerce** and the **California Labor Federation** were among the organizations that negotiated the agreement, with involvement from Gov. **Gavin Newsom**'s office and Democratic lawmakers — Assemblymember **Ash Kalra** (D-San Jose) and state Sen. **Tom Umberg** (D-Santa Ana) carried the bills.

Business groups have long argued that PAGA, which lets wronged workers sue employers on the state's behalf, leads to unnecessary and expensive lawsuits.

“This package provides meaningful reforms that ensure workers continue to have a strong vehicle to get labor claims resolved, while also limiting the frivolous litigation that has cost employers billions without benefiting workers,” California Chamber of Commerce president and CEO **Jennifer Barrera** said in a statement praising the compromise.

Supporters of the existing law have called it an important tool to ensure workers’ rights are respected.

“We are happy to have negotiated reforms to PAGA that better ensure abusive practices by employers are cured and that workers are made whole, quicker,” said the California Labor Federation’s **Lorena Gonzalez**.

WHAT’S HAPPENED SO FAR?

The announcement of a negotiated deal came just nine days before the June 27 deadline to remove qualified measures from the November ballot. From the start, the PAGA initiative seemed like a prime candidate for legislative compromise. Starting last year, a business coalition called “Fix PAGA” invested in an ad campaign calling on lawmakers to “fix PAGA.” The deal saved pro-repeal forces from having to spend an estimated $20 million to persuade voters to strike down the law.

Opponents of the measure, including leading labor organizations also eager to avoid a costly ballot fight on PAGA, were willing participants in months of negotiations described as collegial.

Originally, Kalra’s AB 2288 would have expanded the scope of PAGA without concessions to business interests, but it staked out labor’s stance to kickstart negotiations. The legislation as introduced would have solely empowered judges to grant injunctive relief, letting courts dictate company policies in areas like leave or classification. By putting another chess piece on the board — a PAGA-expanding counter to the PAGA-trimming initiative — the labor and attorneys’ groups potentially gave business more incentive to negotiate.

WHAT’S NEXT?

Newsom’s administration will pursue a trailer bill allowing the California Department of Industrial Relations, which is under the Labor and Workforce Development Agency, to expedite hiring and fill its current vacancies, helping ensure the agency is equipped to handle employee labor claims more quickly.

WHAT ARE SOME STORIES ON THE BILL?

Read POLITICO news on AB 2288 and SB 92.

Emily Schultheis and Jeremy White contributed to this report.