

## California Governor Brown's Proposed PAGA Unit May Have Power to Challenge PAGA Settlement in Court

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Wednesday, February 24, 2016

The budget change [proposal](#) for the 2016/17 Fiscal Year submitted by Governor *Brown* last month contains significant proposed changes to the operation of the Labor & Workforce Development Agency ("LWDA"), the agency responsible for overseeing the **Private Attorney Generals Act of 2004 ("PAGA")** including the creation of a "PAGA Unit" with the authority to intervene and object to the adequacy of the settlement funds designated to PAGA claims. The budget requests a \$1.6 million increase to the operation budget to cover additional staffing needs for the agency and an additional \$1.5 million going forward to "stabilize and improve the handling of PAGA cases." The budget proposal justifies the request for additional resources to increase the LWDA's effectiveness.

Before filing a claim for PAGA violations, a plaintiff must first notify the LWDA and the employer about the alleged violations to provide it with an opportunity to investigate the claims. The Department of Industrial Relations ("DIR") estimates "less than 1% of cases have historically been reviewed/investigated." An increase in investigations may help curb some abuses to PAGA litigation, as citations issued by the division preclude an employee from commencing an action under PAGA. However, where an investigation is not commenced, or a citation is not issued, employers will still be required to litigate the cases in court.

PAGA settlements require court review and approval for penalties sought, but, in most instances, there is no requirement to notify the LWDA or seek input from the agency on the adequacy of the settlement amount. There is an exception for PAGA cases involving OSHA violations, and the proposal would seek to extend this requirement to all cases under PAGA. The stated justification for the change is to act as a "check and balance" against the incentive current litigants may find to discount claims and interests of other employee class members to the benefit of the representative plaintiff and his or her attorneys. The budget change proposal indicates the cost of the additional oversight for the PAGA Unit "is likely to be offset if not exceeded by larger penalty recoveries to the state." In other words, providing the DIR with the power to intervene and object to PAGA settlements may lead to increased settlement values and further litigation. PAGA penalties recovered in an action under the statute must be distributed 25% to aggrieved employees and 75% to the LWDA.

At this point, legislation is still required to effectuate the proposed changes. However, employers should continue to monitor these developments as they occur.

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