

California Employers Facing Claims For Wage Statement Violations Catch Minor Break From California Legislature But Must Act Fast

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The California Legislature has not been particularly kind to employers within the state in recent years and has increased employers' compliance obligations by enacting measures requiring paid sick leave and gender wage equality that provide for a private right of action to enforce its provisions, among other measures. However, employers caught a minor break with the enactment of Assembly Bill 1506. A.B. 1506, which became effective upon signing by Governor Jerry Brown on October 2, 2015, that amends the Labor Code Private Attorneys General Act of 2004 (PAGA). The PAGA allows employees to sue to collect civil penalties for violations of employment laws that would otherwise be assessed and collected by the Labor and Workforce Development Agency (LWDA).

A.B. 1506 permits employers to cure violations of Labor Code sections 226(a)(6) and 226(a)(8), which require employers to provide each employee with an itemized wage statement at the time of payment of wages that includes the inclusive dates of the pay period for which the employee is paid and the name and address of the legal entity that is the employer, respectively. The bill allows an employer 33 days to cure a violation of those provisions and thus avoid a lawsuit brought under the PAGA seeking penalties for violations of those requirements. To effectively cure, an employer must, within 33 days of the date notice of the alleged PAGA violation is sent to the LWDA and the employer, provide a fully-compliant itemized wage statement to each employee affected by the violation for the preceding three-year period. An employer utilizing the opportunity to cure must also provide notice during the 33-day period to the allegedly aggrieved employee and the LWDA of the actions it has taken to cure the violation. If an employer adequately cures the violation, an employee may not commence a PAGA action based on the alleged violations of Labor Code sections 226(a)(6) and 226(a)(8).

There are obviously limitations to A.B. 1506, and it is far from a panacea for employers. First, the opportunity to cure applies only to violations of Labor Code sections 226(a)(6) and 226(a)(8). However, labor Code 226 (a) sets forth nine requirements for the contents of itemized wage statements, and there is no right to cure for violations of any one of the seven other requirements. Second, the bill provides an employer with only a brief 33-day period to cure. Finally, the obligation to effectively re-do wage statements for a three-year period



and to re-issue those wage statements to all employees who received the deficient statements plainly imposes a significant administrative burden on an employer.

Despite those limitations, employers who receive notice of a potential PAGA action based violations of Labor Code sections 226(a)(6) and 226(a)(8) should closely consider curing these violations to avoid a PAGA lawsuit. Penalties under PAGA may be substantial, particularly if the violations involved a large number of employees. Further, before they face litigation, it is prudent that employers review the wage statements they provide employees to ensure compliance with Labor Code section 226(a). The old adage that “an ounce of prevention is worth a pound of cure” fully applies in this context. If your company is in the unenviable position of receiving a PAGA letter based on a purported violation of wage statement legal requirements, be sure to contact legal counsel immediately to determine whether or not your company might take advantage of the opportunity to cure provided by this legislation.

If you have any questions, please contact your Lathrop Gage attorney or any of the attorneys listed above.