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Class Action Litigation in 2026: PAGA Reform, Trends, Tactics, and What's Next

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Poll 1 – PAGA Notice

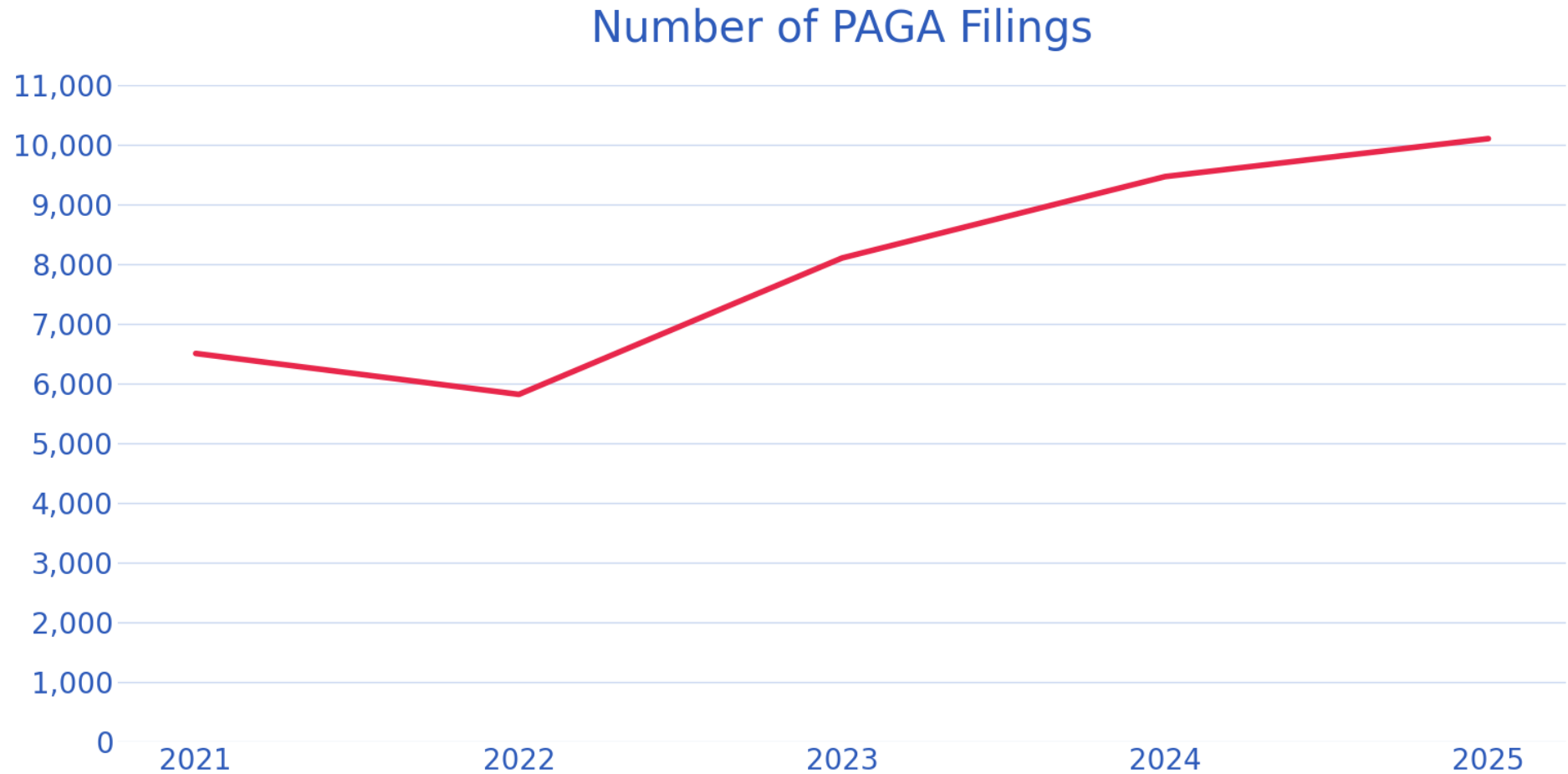
Has your organization received a PAGA Notice in the last two years?

- A. Yes**
- B. No**
- C. What is a PAGA Notice?**

PAGA Reform, Trends, Tactics, and What's Next

- **PAGA Statistics**
- **PAGA Reform: General Overview**
- **Proposed LWDA Regulations**
- **Early Challenges to the PAGA Notice**
- **Strategies to Reduce PAGA Penalties**
- **Arbitration Agreements**
- **Frequent Allegations**

PAGA Statistics



Source: LWDA/DIR PAGA notice filing data

PAGA Statistics

- **Administrative exhaustion is easy to satisfy**
- **Cannot be basis for removal to federal court**
- **Class certification requirements do not apply**
- **Summary judgment is challenging**
- **Liberal state-law pleading and discovery rules**
- **Use of arbitration is limited**
- **Courts may be unwilling to require trial plans or manageability**

PAGA Reform: General Overview

	Pre-Reform Cases (letters from 6/18/2024 or earlier)	Post-Reform Cases (letters from 6/19/2024 or later)
Standing	Plaintiff need only allege a single Labor Code violation at some point during employment	Plaintiff must have personally experienced each violation alleged
Scope of Claims	Can sue on behalf of all employees for any violation – even violations the plaintiff never experienced	Can sue on behalf of others only for violations the plaintiff personally experienced
Penalty Caps	No caps – still not out of the woods in this time period...	15% cap if compliance sought before the PAGA letter; 30% cap if sought after
Wage Statements	Penalties available even without injury	Capped at \$25/employee/pay period with no injury; no stacking of additional PAGA penalties
Penalty Allocation	75% to LWDA / 25% to employees	65% to LWDA / 35% to employees

PAGA Reform: General Overview

REDUCED PAGA PENALTIES

15% Cap on PAGA Penalties

- Cap civil penalties at 15% if organization takes “all reasonable steps” to comply before receiving a PAGA notice or an employee’s records request

30% Cap on PAGA Penalties

- Cap penalties at 30% if organization takes take “all reasonable steps” to comply prospectively, within 60 days of receiving the PAGA notice

PAGA Reform: General Overview

Strategy	What It Involves
“All Reasonable Steps”	• Periodic payroll audits (privileged v. non-privileged) • Updating written policies • Training supervisors on compliance • Taking corrective action against supervisors
How It Is Judged	Totality of the circumstances: the employer’s size and resources and the nature, severity, and duration of the alleged violations
PAGA Cure	After a PAGA notice, correct the violation and make affected employees whole — to avoid or limit penalties
Curable Violations	Wage statements, minimum wage, overtime, meal & rest breaks, and expense reimbursement
Cure Process	• Small employers (<100): confidential cure proposal to the LWDA within 33 days • Larger employers (100+): early evaluation conference + stay of discovery

Proposed PAGA Regulations

On February 6, 2026, the LWDA issued proposed regulations to:

- **Clarify the purpose of PAGA's administrative notice requirements**
- **Expand cure processes for employers**
- **Address ambiguities with litigation reporting obligations**

Proposed PAGA Regulations

- **Proposed Rules Address Abuses in the Exhaustion Process**
 - **Several additional requirements on PAGA filers**
 - **New standardized form to file PAGA notices with the LWDA**
 - **Standardized notices should make boilerplate filings easier to challenge**

Proposed PAGA Regulations

- **Proposed Rules Deter High-Frequency and Vexatious Filers**
 - **Attorneys or firms filing 200 or more PAGA notices in a 12-month period would be designated “high-frequency filers”**
 - **High-frequency and vexatious filers face additional obligations before filing any notice, including special certifications**
 - **The LWDA will publish a list of both high-frequency and vexatious filers on its website**

Poll 2 – Small Employer Cure Threshold

Under the 2024 PAGA amendments, how many employees can an employer have and still qualify as a “small employer” for purposes of the PAGA cure process?

- A. Fewer than 5 employees.**
- B. Fewer than 25 employees.**
- C. Fewer than 100 employees.**
- D. Fewer than 250 employees.**

Proposed PAGA Regulations

- **Proposed Rules Clarify the Small-Employer Cure Process**
 - **The 2024 PAGA amendments created a cure mechanism for “small employers” – those with fewer than 100 employees**
 - **The proposed regulations clarify how employees are counted for the small-employer designation**
 - **They also explain how employers can avail themselves of the cure process**

Proposed PAGA Regulations

➤ Proposed Rules Add Oversight Over PAGA Settlements

For employees, the proposed rules would:

- Prohibit amending a PAGA notice to add violations after a settlement is reached or during the settlement process
- Require a settling employee to give notice of the settlement in all overlapping cases
- Impose an affirmative duty to locate all overlapping cases using the LWDA's PAGA case search function

For employers:

- A settling employer would need to verify that the employee's list of overlapping actions is accurate and complete

Proposed PAGA Regulations

➤ Proposed Rules Add Oversight Over PAGA Settlements

For both parties:

- The LWDA must be given 45 days to review any proposed PAGA settlement – the parties cannot consent to a court order shortening that period
- Parties cannot settle PAGA cases after a notice is submitted to the LWDA but before a lawsuit is filed

For overlapping cases:

- Parties in overlapping cases could submit settlement objections to the LWDA within 21 days after receiving notice

PAGA Notice: True or False

- **Before filing a lawsuit asserting a PAGA claim, an employee must submit a written PAGA notice to the LWDA and the employer identifying the alleged Labor Code violations.**

TRUE — This is part of PAGA's administrative exhaustion process.

- **Once an employee submits a PAGA notice to the LWDA, the employee can immediately file a lawsuit with a PAGA claim in court.**

FALSE — PAGA requires the employee to satisfy the statutory notice and waiting-period requirements before commencing the PAGA action.

PAGA Notice: True or False (cont.)

- **Filing a PAGA notice with the LWDA automatically serves the notice on the employer.**

FALSE — Filing through the LWDA's PAGA portal does not itself constitute service on the employer; the employee must comply separately with the statutory service requirements.

- **An employee's PAGA lawsuit may pursue Labor Code violations that were not identified in the employee's LWDA notice.**

FALSE — The LWDA notice defines the scope of the administratively exhausted PAGA claims; alleged violations must be adequately identified in the notice before they can be pursued in the PAGA action.

Early Challenges to PAGA

- **Evaluating and responding to the PAGA Notice**
- **Mitigating damages: reasonable steps and curing**
- **Once the lawsuit is filed: arbitration and frequent allegations**

Early Challenges to PAGA

➤ Evaluating the PAGA Notice

- Before suing, an employee must give notice to the LWDA and the employer – the agency holds a “right of first prosecution”
 - *Williams v. Alacrity Solutions Group, LLC* (2025) 110 Cal.App.5th 932
- The notice must identify the specific Labor Code provisions allegedly violated and the facts and theories supporting each violation
- It must be specific enough that the LWDA and the employer can glean the underlying factual basis for the alleged violations
 - *Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874
- Why it matters: The notice defines the case, and a deficient notice is a defense opportunity

Early Challenges to PAGA

- **Strategies for Dealing with Deficient PAGA Notices**
 - **Scrutinize the notice immediately: does it identify the specific Labor Code provisions and the facts and theories supporting each alleged violation?**
 - **Boilerplate, “cut-and-paste” notices may fail administrative exhaustion – a deficient notice can support a challenge to some or all of the claims**
 - **Hold plaintiff to the notice: violations and theories not fairly included in the notice are not properly before the court**
 - **Oppose attempts to expand the case later through amendments adding un-noticed claims**
 - **Preserve the defense: raise notice deficiencies early and in responsive pleadings**
 - **LWDA’s proposed standardized notice forms should make deficiencies easier to identify**
 - **Practical tip: send any PAGA notice to counsel the day it arrives – cure and response deadlines start running on receipt**

Tactics to Reduce PAGA Penalties

- Reasonable steps
- Curing and the Early Evaluation Conference
- The LWDA response letter
- Cure options for small employers
- Pre-litigation and early-stage mediation

Poll 3 – Audit

Has your organization completed a wage and hour audit of pay and time records?

- A. Yes, within the last 12 months**
- B. Yes, within the last 24 months**
- C. No**

Poll 4 – Supervisor Training

Has your organization provided wage and hour training specific to supervisors and managers?

A. Yes, within the last 12 months

B. Yes, within the last 24 months

C. No

Reasonable Steps: Sample Payroll Audit

Pay calculations

- Review payroll going back one year
- Review timekeeping system for rounding, off-the-clock, and auto-deduction issues

Time and breaks

- Audit meal and rest period policies and practice records

Records and wage statements

- Review all wage statements for accuracy

Final pay

- Review final pay practices and timing

Document it

- Record that the audit took place – a short memo or internal email noting the date, who conducted it, and the findings

Reasonable Steps: Policies, Training, Discipline

Written policies

- Issue policy updates in writing to all affected employees
- Send all materials to your attorney for review before redistribution
- Once reviewed, distribute the policies to employees for signed acknowledgment

Supervisor training

- Train supervisors on the wage and hour policies
- Document attendance, materials, and dates – and require signed acknowledgments

Corrective action

- Investigate any supervisor identified through the audit as altering timecards or denying/interrupting breaks
- Issue documented discipline and retraining

Poll 5 – Arbitration Agreement

Does your organization have an arbitration agreement?

A. Yes

B. No

C. I don't know

From the Notice to the Courtroom

Prevention and early response only go so far. Most PAGA notices still ripen into lawsuits.

So what happens once the complaint is filed?

- **The first battleground: compelling the individual claim to arbitration**
- **Recent case law shaping how those motions are decided**
- **The allegations we see over and over – and how they map to your compliance efforts**

Your Arbitration Agreement: Will It Hold Up?

- A well-drafted, properly rolled-out arbitration agreement remains one of the strongest tools for limiting PAGA exposure – the individual claim can be compelled to arbitration and the representative case stayed
- Expect the agreement itself to be attacked – courts closely scrutinize how agreements are presented, signed, and stored
- Common employee challenges we are seeing:
 - *“I didn’t sign it” – disputes over electronic signatures and onboarding records*
 - *Language accessibility – agreements not provided in the employee’s primary language*
 - *Unconscionability – one-sided, “overloaded” employer-friendly terms, cost-shifting, or unfair discovery limits*
 - *Multiple versions of agreements in circulation*
- What employers should do now: use one current, balanced agreement; keep signed copies and rollout records; provide translations where needed; audit older versions

PAGA Arbitration: Pros and Considerations

Factor	What It Means for Employers
Early determination of standing	Resolve whether the plaintiff is an “aggrieved employee” before representative discovery begins
Stays representative discovery	The representative case is paused while the individual claim is arbitrated
Speed and efficiency	Streamlined procedures and faster decisions than crowded court dockets
Confidentiality	Proceedings are private, unlike the public court file
Flexibility	The parties shape the process and select the arbitrator
Resolution prospects	Individual arbitration often creates early settlement opportunities
Cost-effectiveness (?)	The employer typically bears the arbitration fees – savings depend on the case

Motions to Compel Arbitration

- **Compelling the individual claim to arbitration remains the key early battleground in PAGA cases**

Recent case law frequently briefed in opposition:

- *Cook v. University of Southern California* – unconscionability challenges to broad, one-sided agreements
 - *Stoker v. Blue Origin* – scrutiny of how agreements are presented and signed
 - *Fuentes v. Empire Nissan* – arbitration agreements paired with other employment documents
 - *Leeper v. Shipt, Inc.* – “headless” PAGA, dodging arbitration
- **Takeaway: courts are testing both the terms of the agreement and the rollout – clean paperwork wins motions**

Frequent Allegations in PAGA Actions

- Meal and rest period violations
- Off-the-clock work
- Regular rate errors
- Wage statement violations
- Unreimbursed business expenses
- Waiting time penalties
- Key takeaway: Audits help to identify errors in pay and time records

Your PAGA Readiness Checklist

- ☐ **Conduct periodic audits of pay and time records**
- ☐ **Act on audit findings**
- ☐ **Update wage and hour policies**
- ☐ **Train supervisors on wage and hour compliance; document attendance and materials**
- ☐ **Documented corrective action against supervisors**
- ☐ **Regular review of arbitration agreements and all employment documents**
- ☐ **Consider cure options and the Early Evaluation Conference**
- ☐ **Consider pre-litigation or early-stage mediation**

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