



There's a **Better, Fairer** Way for Workers



Frequently Asked Questions

What is California's Private Attorneys General Act (PAGA)?

California's Private Attorneys General Act (PAGA), enacted in 2004, was intended to improve the process used to resolve employee labor disputes. However, nearly two decades after the bill's passage, it is clear that **PAGA is failing both workers and small businesses**. PAGA's lawsuit first system **takes double the time to resolve employee claims, and workers receive pennies on the dollar¹ compared to claims that are investigated and resolved by the state's Labor and Workforce Development Agency (LWDA)**.

The state Labor Commissioner's office recently said that **PAGA's lawsuit-first system "fell short of protecting the interests of the state and workers."**²

How are workers being hurt by PAGA's lawsuit-first approach?

Under the lawsuit-first system, workers get pennies on the dollar while lawyers make billions. According to state documents, the average employee **award decided through a PAGA lawsuit is three times lower** than the payout under cases decided by LWDA, with plaintiff attorneys receiving 33% or more of the total recovery. PAGA's lawsuit-first approach also takes **double the time to resolve**. In fact:

- The average payment a **worker receives from a state-decided case is \$3,956 versus \$1,300 from a PAGA lawsuit**.³
- On average, it takes **state-decided cases 310 fewer days to be resolved**.⁴

What sort of fixes does the coalition support?

We are confident that the eligible ballot initiative, which is slated for the November 2024 ballot, is the right approach to protect workers while also reforming the abusive lawsuit-first PAGA system. These fixes include:

- **Faster resolution for workers.**
 - Utilizing the existing LWDA process to streamline resolution, minimize the need for lawsuits and help ensure swift and fair recovery for workers.
- **Ensuring more money goes to workers.**
 - Most – if not all – of the money awarded through recovery should go directly to workers.

1. Baker & Welsh, LLC. August 22, 2023. "Labor Code Private Attorneys General Act of 2004: Outcomes and Recommendations." https://fixpaga.com/wp-content/uploads/2024/02/CA-Private-Attorneys-General-Act_Outcomes_Feb-2024.pdf

2. State of California, Budget Change Proposal, Fiscal Year 2019-20, Analysis of Problem 7 (submitted May 10, 2019). https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP3230.pdf

3. See Baker & Welsh analysis. Page 10.

4. See Baker & Welsh analysis. Page 10.

- **Tougher penalties on businesses that violate the law.**
 - Increased penalties for employers who willfully violate labor laws.
 - LWDA and other enforcement agencies should be empowered to investigate industries and businesses with the most rampant labor law violations.
- **Eliminating the need for costly, abusive lawsuits.**
 - More information and guidance should be provided to small businesses, non-profits and others on navigating labor laws while allowing them to correct mistakes and avoid costly legal challenges.

What types of violations are PAGA lawsuits filed over?

A class-action-like PAGA lawsuit can be filed for almost any violation of the Labor Code. This includes technical violations as minor and immaterial as typos or clerical errors on a paystub.

In 2017, a PAGA lawsuit was filed against a non-profit serving individuals with disabilities, claiming failure to provide overtime wages. After the non-profit immediately reconciled the wage issue, the plaintiff's attorneys added a claim to the lawsuit because the name of the organization was shortened to "Inc." on paystubs. This additional claim resulted in attorneys receiving approximately \$200,000 and workers receiving \$61.18 each.

“As a non-profit that provides support for adults with developmental disabilities and their families, we operate with very tight margins and don't have hundreds of thousands of dollars to fight expensive PAGA lawsuits. We care deeply about those we serve ... but if we're hit with another lawsuit, we may not be able to continue to provide our critical services. This would be devastating for one of the most vulnerable populations throughout California.”

– Disability Services Non-Profit in Northern California

Aren't large companies the only organizations impacted by PAGA lawsuits?

No. Whether you have 3 or 3,000 employees, there are no limitations on the size of the business that may face a PAGA claim. Additionally, there is no limit to the number of lawsuits that can be filed, and many businesses are often re-targeted after a claim.

Because small businesses, non-profits, local governments, labor unions, school districts and other smaller employers are least equipped to fight protracted litigation, these employers are often the targets of predatory shakedown PAGA lawsuits.

According to an analysis prepared by a former LWDA official, **PAGA lawsuits have resulted in more than \$10 billion in payments since 2013**,⁵ with a significant chunk going to lawyers and workers getting pennies on the dollar.

What is the alternative to the lawsuit-first PAGA system?

California's Labor Workforce and Development Agency (LWDA) investigates and processes worker claims. This system is faster and more money goes into the pockets of workers.

- The average payment a worker receives from a state-decided case is **\$3,956 versus \$1,300 from a PAGA lawsuit.**
- On average, **it takes state-decided cases 310 fewer days to be resolved.**

5. See Baker & Welsh analysis. Page 11.

If PAGA is reformed, will employees have the ability to file lawsuits against their employers to address labor disputes?

Yes. Employees may still file civil actions or file a complaint with the LWDA. If the employee is dissatisfied with LWDA's investigation and resolution process, reforms will not impact workers' ability to file a lawsuit against their employer in Superior Court.

Is LWDA equipped to handle more worker cases, especially in light of the state's \$38 billion budget deficit?

Yes. Through recent legislative changes, LWDA no longer relies on the state's General Fund and has a permanent, dedicated funding source through employer assessments. In fact, according to state documents, LWDA currently has \$250 million in a fund for enforcement and education. That fund is owed an additional \$107 million from a loan made to the General Fund in FY 20/21 that remains to be repaid.

This money could fund the creation of an alternative administrative framework that would better serve workers, provide compliance assistance to employers seeking to follow the law and focus more effectively on companies that are bad actors.

Would a "right to cure" address the coalition's concerns?

No. Under "right to cure," determining whether a violation has been resolved is up to the parties. There is no incentive for trial attorneys to accept a "cure" that is anything less than paying the alleged violations out in full. Therefore, to "cure," the employer would essentially have to accept as true that every single worker experienced every single alleged violation on every single shift and pay out that amount plus attorney's fees.

How can I get involved?

Sign up to support fixing PAGA to create a better, fairer system for California workers at FixPAGA.com. After signing up, reach out to our team at info@FixPAGA.com to share your story and explore opportunities to reach out to your legislator and more.

**It's time for the Legislature
to fix PAGA to create a better,
fairer system for workers.**



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