

Proposed Text:

Please note: all regulatory text below is proposed to be added to the California Code of Regulations. (See Cal. Code Regs., tit. 1, § 8, subd. (b).)

California Code of Regulations
Title 8. Industrial Relations
Division 1. Department of Industrial Relations

Chapter 9. Labor Code Private Attorneys General Act of 2004

Subchapter 1. General Scope and Application

§ 17400. Scope and Application.

This chapter governs the administrative processes and review requirements set forth in the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698 et seq.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, 2699.5, 2699.6, 2699.8, Labor Code.

§ 17401. Definitions.

As used in this chapter:

“Agency” means the Labor and Workforce Development Agency.

“Claimant” means an individual who claims to be an aggrieved employee and has filed a PAGA notice.

“Day” or “days” mean calendar days, unless otherwise indicated.

“Department” means the Department of Industrial Relations.

“Division” means the Division of Occupational Safety and Health within the Department.

“Division 5” means Division 5 of the Labor Code, codified at Labor Code section 6300 et seq.

“Labor Commissioner’s Office” means the Division of Labor Standards Enforcement within the Department.

“Online PAGA filing portal” means the online Web page maintained by the Department, available at <<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>>, through which parties electronically must file PAGA notices and other documents with the Agency in pending PAGA cases.

“PAGA” means the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698 et seq.

“PAGA notice” means a notice of alleged Labor Code violations filed by a claimant with the Agency pursuant to subdivisions (a)(1)(A), (b)(1), or (c)(1)(A) of Labor Code section 2699.3.

“Party” means either a claimant or respondent in a matter pending before the Agency following the filing of a PAGA notice, or a plaintiff or defendant in a PAGA lawsuit. “Parties” refers to both a claimant and respondent in a matter pending before the Agency, or a plaintiff and defendant in a PAGA lawsuit.

“Respondent” means an employer named in a claimant’s PAGA notice filed with the Agency and against whom the alleged Labor Code violations are directed.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, Labor Code.

Subchapter 1.5. Filing and Service

§ 17410. Filing Via the Online PAGA Filing Portal.

(a) Unless otherwise provided in this chapter, documents a party files with or submits to the Agency as required or permitted under PAGA must be filed or submitted electronically using the appropriate link provided on the online PAGA filing portal, as follows:

(1)(A) A PAGA notice shall be filed using the “New PAGA Claim Notice” link.

(B) An amended PAGA notice shall be filed using the “Amended PAGA Claim Notice” link.

(2) A response by an employer to a PAGA notice or an amended PAGA notice pursuant to Labor Code section 2699.3, subdivision (a)(1)(B) or (c)(1)(B) shall be filed using the “Employer Response” link.

(3) Small Employer Administrative Cure Proceedings.

(A) An employer's proposal to cure alleged violations pursuant to Labor Code section 2699.3, subdivision (c)(2)(A) shall be submitted using the "Employer Cure Notice or Proposal to Cure" link.

(B) Documents filed in connection with cure proceedings under Labor Code section 2699.3, subdivisions (c)(2)(B) and (c)(2)(C), including, but not limited to, pre-conference statements, records relevant to an employer's cure, or an employer's notice of cure completion, shall be filed using the "Cure Documents" link.

(C) An employee's request for a hearing under Labor Code section 2699.3, subdivision (c)(2)(D) when the employee disputes a cure determination by the Agency shall be filed using the "Employee Cure Hearing Request" link.

(D) Documents filed in connection with a cure hearing under Labor Code section 2699.3, subdivision (c)(2)(D) shall be filed using the "Cure Documents" link.

(4) Wage Statement Administrative Cure Proceedings.

(A) An employer's notice it has cured an alleged wage statement violation pursuant to Labor Code section 2699.3, subdivision (c)(3)(A) shall be filed using the "Employer Cure Notice or Proposal to Cure" link.

(B) An employee's notice disputing an employer's cure notice pursuant to Labor Code section 2699.3, subdivision (c)(3)(B) shall be filed using the "Employee's Cure Dispute" link.

(C) If an employer has filed a cure notice under Labor Code section 2699.3, subdivision (c)(3)(A) and the Agency determines the cure is insufficient but provides the employer additional time to complete the cure as permitted under Labor Code section 2699.3, subdivision (c)(3)(B), any subsequent cure completion notice by the employer shall be filed using the "Cure Documents" link.

(5) Documents Related to Court Proceedings.

(A) A file-stamped copy of a complaint alleging claims under PAGA shall be submitted to the Agency pursuant to Labor Code section 2699, subdivision (s)(1) using the "Court Complaint" link.

(B) A proposed settlement of any civil action including claims under PAGA shall be submitted to the Agency pursuant to Labor Code section 2699, subdivision

(s)(2) using the “Proposed Settlement of PAGA case” link.

(C) A court judgment or order awarding or denying civil penalties, including an order or award entered during arbitration, in any civil action including claims under PAGA shall be submitted to the Agency pursuant to Labor Code section 2699, subdivision (s)(3) using the “Court Order or Judgment in PAGA case” link.

(6) Any other document not described in this subdivision related to a proceeding under PAGA, or a civil action including claims under PAGA, may be submitted to the Agency using the “Other Documents” link.

(b) A document is not deemed filed with or properly submitted to the Agency unless it is filed or submitted using the correct link on the online PAGA filing portal.

(c) By filing or submitting documents with the Agency using the online PAGA filing portal, a person indicates their consent to receive communications and documents regarding the case by email unless otherwise provided by statute or regulation.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, Labor Code.

§ 17411. Filing Fees; Waivers.

(a) A \$75 filing fee applies to:

(1) A PAGA notice;

(2) An employer response to a PAGA notice or amended PAGA notice filed pursuant to Labor Code section 2699.3, subdivision (a)(1)(B) or (c)(1)(B); and

(3) An employer cure proposal submitted pursuant to Labor Code section 2699.3, subdivision (c)(2)(A) or an employer cure notice filed pursuant to Labor Code section 2699.3, subdivision (c)(3)(A).

(b) A document for which a filing fee is required as set forth in subdivision (a) will not be deemed filed until the filing fee is paid, unless subject to waiver under subdivision (c).

(c) The filing fees described in subdivision (a) are subject to waiver in accordance with the provisions of Government Code sections 68632 and 68633. A copy of the Judicial Council application form described in Government Code section 68633 for requesting a fee waiver shall be made available on the online

PAGA filing portal.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 68632, 68633, Government Code; Section 2699.3, Labor Code.

§ 17412. Redacting Private Information.

A person filing or submitting a document using the online PAGA filing portal must redact the following personally identifiable information from all documents and attachments: (1) social security or taxpayer identification numbers; (2) personal addresses; (3) personal telephone numbers; (4) personal email addresses; (5) dates of birth; (6) names of minor children; and (7) financial account numbers.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 1, article 1, California Constitution; Section 1798.1, Civil Code; Sections 2699, 2699.3, Labor Code.

§ 17413. Service of Documents on Other Parties.

Unless otherwise provided in this chapter, documents a claimant or respondent files with or submits to the Agency pursuant to the procedures set forth in subdivisions (a), (b), or (c) of Labor Code section 2699.3, as implemented by this chapter, shall be served on all parties to the proceeding by certified mail and be accompanied by proof of service in accordance with one of the methods described in Code of Civil Procedure section 1013a.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1013a, 2015.5, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code.

§ 17414. Computations of Time; Time of Filing.

(a) Unless otherwise provided, the time in which any act required or permitted under Labor Code sections 2699 or 2699.3 or this chapter must be done is calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, in which case the last day is extended to the next business day.

(b) If the last day to perform any act or for a party to file a document as required or permitted under Labor Code sections 2699 or 2699.3 or this chapter falls on a Saturday, Sunday, or other legal holiday, the time to perform such act or filing is extended to the next business day.

(c) Documents filed with or submitted to the Agency using the online PAGA filing portal between 12:00 a.m. and 11:59 p.m. will be deemed filed or submitted

that same day, except that filings or submissions on a Saturday, Sunday, or other legal holiday will be deemed filed or submitted the next business day.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 12, 12a, 135, Code of Civil Procedure; Section 6700, Government Code; Sections 2699, 2699.3, Labor Code.

§ 17415. High-Frequency and Vexatious Filers; Additional Notice Requirements and Prefiling Screening Orders.

(a)(1) The protection of workers' rights is a fundamental public policy of this state. PAGA provides a unique and effective tool for enforcing labor laws and both encouraging compliance with and deterring violations of the Labor Code.

(2) Notwithstanding this important public policy, at the time of adoption of this regulation, there have been documented instances of some attorneys filing PAGA notices that are based on templates alleging frivolous, conclusory, or boilerplate violations of the Labor Code. This conduct interferes with the Agency's role and ability to perform its responsibilities under the law, including as it relates to reviewing PAGA notices for possible investigation or prosecution or administering the early resolution cure procedures under subdivision (c) of Labor Code section 2699.3. This conduct also deprives employers of fair and proper notice of the violations alleged against them, including for purposes of identifying the bases for the violations alleged so they may take appropriate corrective or prospective compliance measures. As a result, these filing practices frustrate the purposes of the law and the proper functioning of the administrative processes created by it, and in doing so are detrimental and harmful to the interests of workers whom the law is intended to protect. In many circumstances, attorneys engaged in such practices do not report filing PAGA lawsuits, thus demonstrating an apparent strategy of using PAGA notices as a bargaining chip in seeking quick individual settlements and attorneys' fees recoveries without representing or seeking to protect the interests of the state or other aggrieved employees. Accordingly, the Agency has determined certain safeguards are necessary to prevent such abusive practices.

(b) As used in this regulation:

(1)(A) The term "high-frequency filer" means any attorney or law firm that has filed 200 or more PAGA notices in the 12-month period preceding the filing of the current PAGA notice.

(B) Notwithstanding paragraph (A), a nonprofit legal aid organization that has obtained Section 501(c)(3) tax-exempt status (26 U.S.C. § 501(c)(3)) and is a qualified legal services project or qualified support center, as defined in section

6213 of the Business and Professions Code, shall not be subject to the provisions of this regulation regarding high-frequency filers.

(2) The term “vexatious filer” means any person or attorney who has repeatedly filed PAGA notices that do not comply with legal requirements, including, but not limited to, on grounds the PAGA notices fail to allege adequately the facts and theories supporting the violations alleged or where the violations alleged are frivolous or appear intended to harass.

(3) The term “prefiling screening order” means an order issued by the Agency prohibiting a vexatious filer from filing any new PAGA notices without first being screened for compliance with applicable statutory and regulatory requirements.

(c) High-Frequency Filers.

(1)(A) An attorney or law firm that is a high-frequency filer shall include a cover letter with each PAGA notice the attorney or law firm files during the period the attorney or law firm retains its status as a high-frequency filer that includes the following text, which shall be in bold and no less than 12-point font type:

PLEASE TAKE NOTICE THAT this notice of alleged Labor Code violations filed with the California Labor and Workforce Development Agency pursuant to the Labor Code Private Attorneys General Act of 2004 (PAGA), codified at Labor Code section 2698 et seq., is filed by an attorney or law firm designated as a “high-frequency filer” pursuant to California Code of Regulations, title 8, section 17415 because the attorney or law firm has filed 200 or more PAGA notices during the 12-month period preceding the filing of the PAGA notice included with this letter.

(B) In addition to the certification and signature requirement applicable to PAGA notices under regulation 17420, subdivision (e), or regulation 17450, subdivision (d), the cover letter described in subpart (A) of this paragraph shall be signed by the claimant under the following certification:

I have reviewed the PAGA notice included with this letter and certify the violations alleged (1) accurately describe the violations I believe I personally suffered during my employment within the past year, and (2) are not presented for an improper purpose, such as to harass or annoy the employer or employers named in the PAGA notice.

(2) The cover letter described in paragraph (1) of this subdivision shall be included with the PAGA notice filed with the Agency and served on the employer.

(3) A high-frequency filer’s failure to comply with the requirements of this

subdivision may result in additional designation as a vexatious filer in accordance with the provisions of subdivision (d) of this regulation.

(d) Vexatious Filers.

(1) No person or attorney may be designated a vexatious filer without being given notice and an opportunity to be heard.

(A) The Agency shall provide written notice to a person or attorney it is considering designating as a vexatious filer, including the grounds therefor. The notice shall be served by email on the person or attorney named in the notice.

(B) The person or attorney to whom the Agency's notice is directed may file a response within 30 days of the date of the notice. Any facts or evidence upon which the person or attorney relies in disputing the Agency's potential designation of the individual as a vexatious filer must be supported by declaration. A response to the Agency notice shall be filed in accordance with regulation 17410, subdivision (a)(6).

(2) Within 30 days after a response to the Agency notice is filed, or if no response is filed the deadline by which a response was due, the Agency shall issue a written determination stating whether the person or attorney named in the Agency notice has been designated a vexatious filer. The determination shall be served by email on the person or attorney named in the Agency's notice. The Agency's determination shall state the bases for the Agency's decision whether to designate the person or attorney as a vexatious filer.

(3)(A) Any person or attorney designated by the Agency as a vexatious filer shall be subject to a prefiling screening order. If an attorney is designated as a vexatious filer, the prefiling screening order may apply to the attorney's law firm to prevent circumvention of prefiling screening requirements. An Agency determination designating an attorney a vexatious filer shall state whether prefiling screening requirements will apply to the vexatious filer's law firm and the bases therefor.

(B) In circumstances where a person, attorney, or law firm is subject to a prefiling screening order as provided in this subdivision, tolling of the applicable limitations period under subdivision (e) of Labor Code section 2699.3 shall commence upon the submission of a PAGA notice to the Agency for review before its acceptance for filing. However, applicable periods for the investigation of alleged violations or other processes set forth in subdivisions (a), (b), or (c) of Labor Code section 2699.3 shall not commence unless and until a conditionally filed PAGA notice has been screened and accepted for filing by the Agency.

(C) Upon receipt of a PAGA notice submitted by a vexatious filer subject to a prefiling screening order, the Agency shall determine whether the proposed PAGA notice complies with applicable statutory and regulatory requirements and provide written notice of its determination by certified mail to both the claimant and employer. If the Agency does not provide such notice within 30 days of submission of the proposed notice, the PAGA notice will be deemed accepted for filing.

(4) Any person or attorney designated as a vexatious filer may petition the Agency to remove such designation. A petition to remove a vexatious filer designation must be filed in accordance with regulation 17410, subdivision (a)(6). No such petition may be filed within six months from the date of the Agency's determination designating the petitioning person or attorney as a vexatious filer. The Agency may prescribe a period longer than six months before a removal petition may be filed based on the nature of the conduct supporting the individual's vexatious filer designation as set forth in the Agency notice under paragraph (2) of this subdivision.

(e) The Agency shall maintain a list on the online PAGA filing portal identifying all persons, attorneys, or law firms designated as high-frequency or vexatious filers.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, Labor Code.

Subchapter 2. Pre-Litigation Notice and Investigation of Claims Filed Under Subdivisions (a) or (c) of Labor Code Section 2699.3

§ 17420. Written Notice by Aggrieved Employee or Representative (PAGA Notices).

(a) An aggrieved employee alleging violations of the Labor Code and seeking to recover civil penalties through a civil action under PAGA shall file a PAGA notice with the Agency using the form prescribed by the Agency and available on the online PAGA filing portal. The notice shall be filed in accordance with regulation 17410, subdivision (a)(1)(A). A case number will be assigned to the matter and sent to the claimant or claimant's representative by email as confirmation of the filing.

(b) A claimant's PAGA notice must be served in accordance with regulation 17413 on the employer against whom the notice is filed and be accompanied by proof of service showing the certified mail tracking numbers for all persons served.

(c) Allegations of safety and health violations of Division 5 and filed with the Division and the Agency pursuant to subdivision (b) of Labor Code section 2699.3 may be combined with other Labor Code violations alleged in a PAGA notice. In such circumstances, the alleged safety and health violations shall be subject to the procedures and requirements of subchapter 5 (commencing with regulation 17450).

(d) The Agency's prescribed PAGA notice form shall include fields for a claimant to provide the following required information:

(1)(A) The names of the claimant and employer;

(B) The dates of the claimant's employment with the employer;

(C) The address or location of the workplace where the claimant worked or works;

(D) The position or title held by the claimant while employed with the employer; and

(E) A short description of the claimant's job duties or work performed by the claimant while employed with the employer.

(2)(A) The specific Labor Code sections allegedly violated by the employer;

(B) A short and plain statement of the facts and theories supporting each violation alleged and personally suffered by the claimant. Conclusory statements, generalized or vague allegations of violations without supporting facts particular to the claimant's circumstances or working conditions, or statements summarizing or restating the law or legal requirements are not sufficient. If the claimant is represented by a nonprofit legal aid organization, a qualified legal services project, or a qualified support center that meets the requirements of Labor Code section 2699, subdivision (c)(2), the notice shall specify which violations the claimant personally suffered, as well as the basis upon which claimant alleges any other violations the claimant did not experience but asserts on behalf of other employees; and

(C) For each of the violations alleged, the specific Labor Code sections providing the civil penalties the claimant seeks to recover.

(e) A claimant's PAGA notice must be signed by the claimant or claimant's representative. In signing the notice, the claimant or claimant's representative is certifying to the best of their knowledge, information, and belief, formed after a reasonable inquiry, the claims asserted (1) are not presented for an improper

purpose, (2) have legal support, and (3) have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(f) No violation or theory of violation may be alleged in any civil action as supporting a cause of action or claim under PAGA or released in any settlement agreement in such an action unless the violation, including the facts and theories supporting the violation, has been alleged in a PAGA notice or amended PAGA notice and there has been compliance with the procedural requirements of these regulations and subdivisions (a) or (c) of Labor Code section 2699.3, as applicable.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code.

§ 17420.5. Amendments to PAGA Notices.

(a) A claimant may amend a PAGA notice filed pursuant to subdivisions (a) or (c) of Labor Code section 2699.3 and regulation 17420. An amended PAGA notice shall be filed with the Agency in accordance with regulation 17410, subdivision (a)(1)(B) and served on the employer in accordance with regulation 17413. The amended notice must be signed by the claimant or claimant's representative and include the certification required by subdivision (e) of regulation 17420.

(b) An amended PAGA notice must include the information required by subdivision (d) of regulation 17420.

(c) The 65-day review and 120-day investigation periods applicable to PAGA notices as set forth in subdivisions (a)(2)(B) and (c)(1)(E) of Labor Code section 2699.3 also apply to amended PAGA notices.

(d) Notwithstanding subdivision (a), a claimant may not amend a PAGA notice to add violations not alleged in a prior PAGA notice as part of, or at any time after the claimant has reached, a proposed settlement agreement with the employer in a pending civil action.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code.

§ 17421. Employer Response.

(a) An employer against whom a PAGA notice or amended PAGA notice has been filed may, but is not required to, file a response. An employer that chooses

to file a response shall comply with the requirements of this regulation.

(b)(1) An employer response shall be filed with the Agency in accordance with regulation 17410, subdivision (a)(2). The response shall be served by email on the claimant and any other parties and be accompanied by proof of service in accordance with Code of Civil Procedure section 1013b.

(2) A document submitted as an employer response pursuant to paragraph (1) and regulation 17410, subdivision (a)(2) will not be designated or treated as a cure proposal or notice subject to the provisions of subdivisions (c)(2) or (c)(3) of Labor Code section 2699.3, as applicable.

(c) An employer response must be filed and served within 33 days after the employer receives a claimant's PAGA notice or amended PAGA notice.

(d) An employer response need not respond to all violations alleged in a PAGA notice. The response should identify the violations to which it responds, and respond separately to each violation addressed. If the employer disputes any of the violations alleged, the response shall describe the bases for such disputes and may be accompanied by supporting evidence.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code.

§ 17422. Notice of Investigation.

(a) The Labor Commissioner's Office has authority over the investigation of claims asserted under subdivisions (a) or (c) of Labor Code section 2699.3. If the Labor Commissioner's Office intends to investigate any violation alleged in a PAGA notice or amended PAGA notice, it shall provide written notice to the claimant and employer within 65 days of the postmark date the claimant's PAGA notice or amended PAGA notice, as applicable.

(b) A notice of investigation under subdivision (a) shall identify the employer or other person or entity subject to investigation, the period covered by the investigation, and a reference to Labor Code section 90.6 for purposes of providing notice of the potential claims subject to investigation.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 90, 90.6, 2699, 2699.3, Labor Code.

§ 17423. Investigation.

(a) Any agent or deputy of the Labor Commissioner conducting an investigation

of alleged violations shall have free access to any worksite or records of the employer within the scope of the investigation.

(b) A claimant shall make themselves reasonably available to the Labor Commissioner's Office upon request for an interview regarding the violations alleged and the bases for them. A request for an interview with the claimant may be made before a notice of investigation is issued.

(c) After providing notice of an investigation to the parties, the Labor Commissioner's Office may take such investigative actions as permitted by law to the extent pertinent or material to any inquiry related to the investigation, including, but not limited to:

- (1) Propounding interrogatories to the employer;
- (2) Inspecting and copying records of the employer;
- (3) Issuing subpoenas requiring the attendance and testimony of witnesses or the production of records, or both;
- (4) Taking depositions, administering oaths, examining witnesses under oath, or taking affidavits or verifications, acknowledgements, or proof of records.

(d) The term "records" as used in this section includes all books, accounts, reports, contracts, payrolls, documents, papers, or other writings as defined in Evidence Code section 250.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 11181, Government Code; Sections 90, 90.6, 91, 92, 93, 1174, 1174.1, 2699, 2699.3, Labor Code.

§ 17424. Citations or Prosecutions by the Labor Commissioner's Office.

(a) If following an investigation the Labor Commissioner's Office determines an employer has committed violations of the Labor Code, an applicable wage order, or local minimum wage or overtime law alleged in a PAGA notice or amended PAGA notice, the Labor Commissioner's Office may issue a citation to the employer for such violations or file an action against the employer based on such violations. A citation shall be served on the employer consistent with regulation 17413, unless the employer agrees to an alternative method of service.

(b) If the Labor Commissioner's Office timely cites or commences an action against an employer based on violations alleged in a PAGA notice or amended

PAGA notice, the claimant may not file a lawsuit including claims under PAGA or proceed on any claims brought under PAGA in any pending civil action.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 90, 90.6, 2699, 2699.3, Labor Code.

Subchapter 3. Small Employer Cure Procedures

§ 17430. Confidential Cure Proposals.

(a)(1) An employer that employed less than 100 employees total during the one-year period before the filing of a PAGA notice may submit to the Agency a confidential proposal to cure a violation or violations alleged in such notice.

(2) A cure proposal shall be submitted to the Agency in accordance with regulation 17410, subdivision (a)(3)(A). It may, but need not, be served on the claimant. If the employer serves its cure proposal on the claimant, it shall do so by email and be accompanied by proof of service in accordance with Code of Civil Procedure section 1013b.

(b) A cure proposal must be submitted within 33 days after the employer's receipt of a PAGA notice or an amended PAGA notice alleging violations or facts not included in an earlier PAGA notice. The proposal shall include a statement identifying the date the employer received the PAGA notice or, if applicable, an amended PAGA notice.

(c) The cure proposal must state specifically the total number of employees employed by the employer during the one-year period before the filing of a claimant's PAGA notice. For purposes of determining an employer's eligibility to file a cure proposal pursuant to Labor Code section 2699.3, subdivision (c)(2)(A) and this regulation, the term "employee" includes all exempt and non-exempt current and former employees employed by the employer at any time during the one-year period before the filing of a claimant's PAGA notice, whether employed on a full-time, part-time, temporary, seasonal, or intermittent basis and without regard to the location of the employees. The Agency may decline to schedule a conference, or may conclude the conference process at any time, in circumstances where separate business entities may constitute a joint employer or single enterprise and the total number of employees between the multiple entities would render them ineligible for the cure process.

(d) A cure proposal must identify the alleged violation or violations the employer proposes to cure. For each violation an employer proposes to cure, the proposal must include a statement describing the actions the employer proposes to cure the violation consistent with Labor Code section 2699, subdivision (d).

(e) A cure proposal submitted by an employer pursuant to Labor Code section 2699.3, subdivision (c)(2)(A) and this regulation is deemed a confidential settlement communication subject to Evidence Code section 1152. No cure proposal may be deemed an admission of liability or relied upon to prove the validity or invalidity of any claim or defense.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17430.5. Curing Violations Alleged in Subsequent PAGA Notices.

An employer may not invoke the cure procedures of subdivision (c)(2) of Labor Code section 2699.3 to cure a violation alleged in a PAGA notice if the employer initiated such cure procedures within the preceding 12-month period after receiving a prior PAGA notice alleging a violation of the same code provision, regardless of the location of the worksite.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17431. Agency Review of Small Employer Cure Proposals.

(a) The Agency will review an employer's cure proposal to determine if it facially is sufficient to correct the violation or violations addressed or if a conference would assist in determining if a sufficient cure is possible.

(b) Within 14 days after submission of an employer's cure proposal, the Agency shall provide written notice to the employer by email if the Agency has determined not to select the employer's proposal for a conference, stating the reasons therefor. If the employer served its cure proposal on the claimant, the Agency notice also shall be sent to the claimant by email. The cure process is deemed concluded upon such written notice by the Agency or if the Agency does not respond to an employer's proposal within the time required.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17432. Notice of Cure Conference.

(a) If the Agency determines a cure proposal facially is sufficient to correct the violation or violations addressed or that a conference would assist in determining if a sufficient cure is possible, the Agency shall provide written

notice to both the claimant and employer of the scheduling of a cure conference. The Agency shall email the parties its written notice scheduling a cure conference within 14 days after an employer submits a cure proposal.

(b) The Agency's cure conference notice shall identify the dates by which both the employer and claimant must file and serve pre-conference statements under regulation 17433. The cure conference notice shall inform the parties of any additional records required to be produced to aid in the Agency's determination whether a sufficient cure is possible.

(c) A cure conference notice shall identify whether the conference will be conducted in person, by videoconference, or by teleconference. Any party may request to conduct the conference at a location or in a format different from that identified in the notice. To do so, the parties first shall meet and confer regarding a mutually agreeable alternative location or format and may propose such location or format to the Agency within seven days of the date of the notice.

(d) A cure conference notice shall identify the date and time of the conference.

(1) A party may request a conference be rescheduled for good cause shown. If a party requests to reschedule the conference, the party first shall meet and confer with the other party regarding its request and proposed alternative dates. The requesting party must submit its request to the Agency, including the basis for it, the other party's position on the request, and three proposed alternative dates for the conference. If the requesting party did not meet and confer with the other party, the request shall state the reason why.

(2) The Agency will not consider any request received less than seven days before the time of the conference absent extraordinary circumstances. If practicable, before making any such request the requesting party first shall meet and confer with the other party regarding the request and proposed alternative dates. The requesting party shall inform the Agency of the other party's position on the request, or if the requesting party did not meet and confer with the other party, the reason why. For purposes of this paragraph, the term "extraordinary circumstances" requires the requesting party to demonstrate an exigent need exists to reschedule the conference and that the request could not reasonably have been made any sooner.

(3) Rescheduling requests under this subdivision shall be made by email to the Agency attorney named in the cure conference notice, and the other party shall be included in the email correspondence.

(4) Absent a showing of exigent circumstances, a cure conference may not be continued more than once from the originally scheduled date.

(e) A party who requests a reasonable accommodation in connection with a cure conference shall do so no later than seven days after the date of the cure conference notice. A request for accommodation under this subdivision shall be made by email to the Agency attorney named in the cure conference notice.

(f) Any applicable statute of limitation on the violations alleged by a claimant in a PAGA notice remains tolled, and no civil action may be commenced thereon, while the Agency's administrative cure review procedures remain pending.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17433. Pre-Conference Submissions.

(a) After the Agency provides written notice of the scheduling of a cure conference as described in regulation 17432 and before the time scheduled for the cure conference to be held, the parties shall file and serve pre-conference statements as set forth in this regulation. Pre-conference statements are intended to aid in the conduct of the cure conference by identifying the specific cure measures proposed and any dispute concerning the sufficiency of those measures for purposes of curing the violations alleged.

(b)(1) Unless the Agency's cure conference notice provides otherwise, at least 14 days before the date of the cure conference the employer shall file with the Agency a statement describing the cure measures it proposes to take. The employer's pre-conference statement shall be accompanied by any records requested by the Agency and described in the cure conference notice issued under regulation 17432.

(2) The Agency, in its sole discretion, may elect to cancel the conference and terminate the administrative cure process if the employer fails to file a pre-conference statement or produce the records requested by the Agency under paragraph (1). Any such termination shall not operate to preclude an employer from requesting early evaluation pursuant to subdivision (f)(14) of Labor Code section 2699.3 in the event a civil action is commenced.

(c)(1) Unless the Agency's cure conference notice provides otherwise, at least seven days before the date of the cure conference the claimant shall file with the Agency a response to the employer's cure proposal stating claimant's position regarding the proposed cure. If the claimant alleges the proposed cure

is insufficient in any respect, the claimant's response must state the factual basis and be accompanied by any evidence upon which the claimant relies in making such an allegation. If claimant is represented by counsel, the preconference statement shall include the amount of attorney's fees and costs incurred to date, if any, that are being claimed and the manner in which such amounts were calculated.

(2) In determining the sufficiency of an employer's proposal or the measures necessary to cure an alleged violation, the Agency may, in its sole discretion, disregard allegations or facts that a claimant fails to articulate in a pre-conference statement as a basis for disputing the sufficiency of a proposed cure, if the claimant was aware or should have been aware of those allegations or facts at the time.

(d) Each party shall serve its pre-conference statement and any supporting documents on the other by email on the same day they are submitted to the Agency. Pre-conference statements must be filed with the Agency in accordance with regulation 17410, subdivision (a)(3)(B) and be accompanied by proof of service in accordance with Code of Civil Procedure section 1013b.

(e) The parties' pre-conference statements constitute confidential settlement communications pursuant to Evidence Code sections 1152 and 1154.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17434. Cure Conferences.

(a) Information provided by the parties during a conference is subject to Evidence Code sections 1152 and 1154. Recording of any portion of a cure conference by audio or video means strictly is prohibited. Conferences are not transcribed.

(b)(1) Parties appearing at a cure conference may be represented by counsel. The attendance of the claimant and a representative of the employer with settlement authority is required. Witnesses and observers are not allowed.

(2) Absent good cause shown, failure of an employer representative to attend the conference shall result in the conference being cancelled and a determination the employer has abandoned its proposal to cure alleged violations under this process. No such determination shall operate to preclude an employer from requesting early evaluation pursuant to subdivision (f)(14) of Labor Code section 2699.3 in the event a civil action is commenced. Absent

good cause shown, failure of the claimant to attend the conference shall preclude the claimant from contesting any determination by the Agency concerning the sufficiency of an employer's proposal or the measures necessary to cure an alleged violation.

(c) The purpose of the conference is to ascertain the requirements of a sufficient cure for the violations at issue based on the information provided by the parties. The Agency attorney or attorneys conducting the conference may speak with both parties together or separately as may be appropriate to identify issues in dispute, ascertain the bases for the violations alleged, and to determine the scope and sufficiency of any necessary cure measures.

(1) If the parties reach an agreement on a plan to cure alleged violations, the Agency will prepare and circulate to the parties a cure plan confirming the terms of the cure measures to be taken by the employer. All parties shall sign and return the cure plan to the Agency. After the cure plan is signed by all parties, the Agency shall email the signed plan to both parties.

(2) If the parties are unable to reach agreement on a plan to cure alleged violations but the Agency determines a sufficient cure is possible, the Agency will issue a cure plan describing those measures necessary to cure the violations. If the employer agrees to take the prescribed cure measures, the employer shall sign and return the cure plan to the Agency, and the Agency shall email the signed plan to both parties.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17435. Completing Cures; Employer Notice.

(a) If a cure plan is reached pursuant to paragraph (1) or (2) of subdivision (c) of regulation 17434, the employer shall complete the cure actions within the time specified in the cure plan, which shall be no later than 45 days after the conference concludes. Upon completion of the cure actions, the employer shall submit to the Agency a sworn statement, signed by an individual with personal knowledge in the manner required by Code of Civil Procedure section 2015.5, attesting to the employer's completion of the cure actions and that the employer is in compliance with the underlying statutes, regulations, or orders at issue. The employer's sworn cure completion notice shall be accompanied by any records required by the cure plan.

(b) The notice and accompanying records required by this regulation shall be served on the claimant by email and submitted to the Agency in accordance with regulation 17410, subdivision (a)(3)(B), accompanied by proof of service

consistent with Code of Civil Procedure section 1013b.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17436. Preliminary Cure Determinations.

(a) Upon receipt of an employer's cure completion notice under regulation 17435, the Agency shall review the notice, including any supporting documents, and verify the cure actions described in the cure plan issued by the Agency under subdivision (c) of regulation 17434 have been completed. The employer has the burden of proof with respect to demonstrating an alleged violation has been cured.

(b)(1) If during the course of reviewing an employer's cure completion notice the Agency finds an aspect of the cure remains incomplete, the Agency in its discretion may provide the employer additional time to complete that aspect of the cure. In no event may the 20-day period under Labor Code section 2699.3, subdivision (c)(2)(C) or subdivision (c) of this regulation be extended for the Agency to verify completion of a cure.

(2) An employer provided an opportunity to complete an aspect of a cure found by the Agency to be incomplete under paragraph (1) of this subdivision shall submit to the Agency a sworn statement in the manner required by subdivision (a) of regulation 17435 upon completing the additional cure actions. The notice and any accompanying records shall be served on the claimant by email and submitted to the Agency in accordance with regulation 17410, subdivision (a)(3)(B), accompanied by proof of service consistent with Code of Civil Procedure section 1013b.

(c) Within 20 days after submission of the employer's cure completion notice under regulation 17435, the Agency shall issue a determination stating whether the cure actions have been completed and identifying the violations cured. If the Agency determines any violation subject to the cure plan has not been completed, the Agency's determination shall identify those violations not cured and the basis for its determination. The Agency's determination shall be served on the parties by email.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17437. Employee Cure Dispute; Request for Hearing.

(a) A claimant may dispute a determination by the Agency under regulation 17436 that a violation has been cured by requesting a cure hearing under Labor Code section 2699.3, subdivision (c)(2)(D). A request for a cure hearing shall be served on the employer by email and filed with the Agency in accordance with regulation 17410, subdivision (a)(3)(C), accompanied by proof of service consistent with Code of Civil Procedure section 1013b.

(b) A claimant's request for a cure hearing must be filed with the Agency within 10 days after the date the Agency issues its cure determination under regulation 17436. Failure to timely file a cure hearing request will be deemed to waive any dispute by the claimant regarding the Agency's determination a violation has been cured.

(c) A claimant's cure hearing request shall identify each violation for which the claimant disputes the sufficiency of a cure and must state the alleged factual basis supporting each disputed cure determination. Conclusory or generalized assertions of a dispute unsupported by specific facts are insufficient.

(d) The Labor Commissioner's Office shall dismiss, in whole or in part, any cure hearing request that does not comply with the requirements of this regulation.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17438. Notice of Cure Hearing.

(a) The Labor Commissioner's Office shall provide written notice of the scheduling of a cure hearing within 20 days after a claimant timely submits a cure hearing request pursuant to Labor Code section 2699.3, subdivision (c)(2)(D) and in compliance with the requirements of regulation 17437. The notice shall be served on all parties by email.

(b) A notice scheduling a cure hearing shall identify the date and time of the hearing. The hearing shall be held within 30 days of the date of the notice. A party may request to reschedule the hearing for good cause shown. If a party requests to reschedule the hearing, the party first shall meet and confer with the other party regarding its request and proposed alternative dates. The requesting party must submit its request to the Labor Commissioner's Office no later than seven days before the date of hearing, including the basis for it, the other party's position on the request, and three proposed alternative dates for the hearing. If the party did not or was unable to meet and confer with the other

party before making its request to the Labor Commissioner's Office, the requesting party shall state the reason why. Rescheduling requests less than seven days before the date of the hearing shall be subject to the same requirements, except that the request must show extraordinary circumstances supporting the late rescheduling request. For purposes of this subdivision, the term "extraordinary circumstances" requires the requesting party to demonstrate an exigent need exists to reschedule the hearing and that the request could not have been made any sooner.

(c) A notice scheduling a cure hearing shall identify whether the hearing will be conducted in person, videoconference, or teleconference and include the location or access information, as applicable. Any party may request to conduct the hearing at a location or in a format different from that identified in the notice. To do so, the parties first shall meet and confer regarding a mutually agreeable alternative location or format and may propose such location or format to the Labor Commissioner's Office within seven days of the date of the notice.

(d) A party who requests a reasonable accommodation in connection with the hearing shall do so no later than seven days after the date of the hearing notice. A request for accommodation under this subdivision shall be made by email to the deputy or agent of the Labor Commissioner's Office named in the hearing notice.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17439. Cure Dispute Hearings.

(a) Cure hearings shall be presided over by a deputy or agent of the Labor Commissioner's Office. The hearing shall be reported or recorded by audio means. Either party may request a copy of the transcript or recording and shall bear all costs incidental to its preparation. If the record of the hearing is transcribed by any party, a copy shall be provided to the Labor Commissioner's Office within five days at no cost.

(b) Parties may, but need not, be represented by counsel. Each party shall have the right to introduce evidence, to call and examine witnesses, and to cross-examine opposing witnesses on any matter relevant to the issues.

(c) The scope of the hearing shall be limited to those issues specifically identified in a claimant's cure hearing request as the basis for disputing the Agency's cure determination. A claimant has the burden of proof regarding any claim an alleged violation determined by the Agency to be cured has not been cured.

(d) The deputy or agent of the Labor Commissioner's Office presiding over a cure hearing shall control the order of presentation of evidence at the hearing, and direct and rule on matters concerning the conduct of the hearing and of the parties appearing. Before the hearing, the presiding officer may issue subpoenas upon application of any party to the proceedings to compel the attendance of necessary witnesses and the production of books and documents. The presiding officer may exercise discretion to limit the number of witnesses subpoenaed either for the purpose of corroboration or establishing a single material fact in issue, or where the party requesting the subpoena has not furnished satisfactory evidence that the witness will be able to give necessary and competent testimony material to the issues at the hearing.

(e) Except as provided in subdivision (d), there is no right to conduct discovery or to file prehearing motions before the cure hearing.

(f) The hearing need not be conducted according to technical rules applied by courts relating to evidence and witnesses, provided that oral evidence may be taken only on oath or affirmation. Immaterial, irrelevant, or unduly repetitious evidence may be excluded. Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall apply. The cure plan issued by the Agency under subdivision (c) of regulation 17434 and the cure determination issued by the Agency under regulation 17436 shall be entered into the record. The cure plan and determination, as well as any other information provided by a party during the cure conference proceedings conducted by the Agency, are subject to Evidence Code sections 1152 and 1154.

(g) The hearing request will be dismissed if the claimant fails to attend the scheduled hearing. In such circumstances, the Agency's cure determination under regulation 17436 will be deemed final, unless the claimant demonstrates good cause for their failure to attend, in which case the Labor Commissioner's Office may in its sole discretion elect to reschedule the hearing. The hearing will move forward if the respondent fails to attend, but the respondent will not have the opportunity to present any evidence, unless the respondent demonstrates good cause for their failure to attend, in which case the Labor Commissioner's Office may in its sole discretion elect to reschedule the hearing.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1152, 1154, Evidence Code; Sections 92, 98, 2699, 2699.3, 2699.5, Labor Code.

§ 17439.5. Cure Determination.

Within 20 days after the conclusion of a cure hearing, the Labor Commissioner's

Office shall issue a determination regarding the adequacy of the cure completed by the employer, stating the reasons for its determination. The determination shall be served on the parties by email.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

Subchapter 4. Wage Statement Cure Procedures

§ 17440. Employer Notice of Cure.

(a)(1) Pursuant to subdivision (c)(3) of Labor Code section 2699.3, any employer against whom a PAGA notice has been filed, regardless of the number of employees employed during the one-year period preceding the filing of the PAGA notice, may cure an alleged violation of Labor Code section 226 by providing notice of such cure in the manner set forth in this regulation. This process is available when an employer seeks to cure only an alleged violation of Labor Code section 226.

(2) Notice of the cure effected by the employer shall be filed with the Agency in accordance with regulation 17410, subdivision (a)(4)(A). The notice shall be served on the claimant consistent with regulation 17413. The cure notice must be filed and served within 33 days of the postmark date of the claimant's PAGA notice or an amended PAGA notice, if applicable. The notice shall include a statement identifying the postmark date of the PAGA notice or amended PAGA notice.

(b) The employer's cure notice shall describe with specificity the actions taken by the employer to cure the alleged violation or violations of Labor Code section 226 consistent with the requirements of Labor Code section 2699, subdivisions (d)(2)(A) or (d)(2)(B), as applicable. The notice shall be accompanied by a declaration from an individual with personal knowledge of the cure actions taken by the employer.

(1) For a cure under subdivision (d)(2)(A) of Labor Code section 2699, the declaration accompanying the cure notice also shall include a copy of the notice sent to all aggrieved employees providing the correct information and identifying each pay period in which a violation occurred during the three years before the date of the PAGA notice.

(2) For a cure under subdivision (d)(2)(B) of Labor Code section 2699, the declaration accompanying the cure notice also shall include a copy of the fully compliant wage statements issued, or electronically made accessible, to the claimant, and a copy of any notice or correspondence sent to all aggrieved

employees regarding the compliant wage statements issued, or electronically made accessible, to them.

- (c) A cure notice filed by an employer pursuant to Labor Code section 2699.3, subdivision (c)(3)(A) and this regulation is deemed a confidential settlement communication subject to Evidence Code section 1152. A cure notice under this regulation shall not be deemed an admission of liability or relied upon to prove the validity or invalidity of any claim or defense.
- (d) If a dispute is not timely submitted by the claimant pursuant to regulation 17441, the Agency shall review the cure actions taken by the employer and, within 17 days after expiration of the time in which an employee could submit a dispute notice, issue a determination whether the employer's actions appear facially sufficient to cure the violations addressed. The Agency's cure determination shall be served on the parties by certified mail.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 2015.5, Code of Civil Procedure; Section 1152, Evidence Code; Sections 226, 2699, 2699.3, 2699.5, Labor Code.

§ 17441. Claimant Notice of Dispute Regarding Employer Cure Notice.

- (a) If the claimant contends the actions taken by an employer as described in the employer's cure notice filed are insufficient to cure the alleged wage statement violations, the claimant must file a notice of such dispute with the Agency no later than 14 days after the date the employer's cure notice was filed with the Agency.
- (b) The claimant's cure dispute notice shall be filed with the Agency in accordance with regulation 17410, subdivision (a)(4)(B) and served on the employer consistent with regulation 17413.
- (c) The claimant's dispute notice shall describe with specificity the factual and legal basis for disputing the sufficiency of the cure actions taken by the employer.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 226, 2699, 2699.3, 2699.5, Labor Code.

§ 17442. Agency Review of Claimant's Cure Dispute; Cure Determinations.

- (a) Upon receipt of a claimant's cure dispute notice, the Agency shall review the cure actions taken by the employer and, within 17 days of receipt of the claimant's dispute notice, issue a determination whether the employer has

cured the violations addressed. The Agency's determination shall be served on the parties by certified mail.

- (b) If the Agency determines the cure actions taken by the employer are insufficient to cure the wage statement violations addressed, the Agency may provide the employer an additional three business days to complete the cure. If the Agency provides this additional cure opportunity to the employer, the Agency's determination shall describe the measures remaining to be taken by the employer to complete the cure, and the determination shall be emailed to the parties.
- (c) If the Agency has provided the employer additional time to cure a violation under subdivision (b), the employer shall file a supplemental cure notice with the Agency within the time allowed. The supplemental cure notice must be served on the claimant by email and filed with the Agency in accordance with regulation 17410, subdivision (a)(4)(C), accompanied by proof of service consistent with Code of Civil Procedure section 1013b. The notice shall describe the additional actions taken by the employer to cure the violations at issue and be accompanied by a declaration from an individual with personal knowledge of such actions and documents evidencing completion of the cure actions consistent with paragraphs (1) or (2) of subdivision (b) of regulation 17440, as applicable. Within seven days of receipt of the employer's supplemental cure notice, the Agency shall issue a determination stating whether the violations have been cured. If the Agency finds the violation has not been cured, the determination shall state the reasons therefor. The Agency's determination shall be served on the parties by certified mail.
- (d) Any applicable statute of limitation on the violations alleged by a claimant in a PAGA notice remain tolled, and no civil action may be commenced thereon, while the Agency's administrative cure review procedures remain pending.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 2699, 2699.3, 2699.5, Labor Code.

§ 17443. Curing Violations Alleged in Subsequent PAGA Notices.

An employer may not invoke the cure procedures of subdivision (c)(3) of Labor Code section 2699.3 to cure a violation alleged in a PAGA notice if the employer initiated such cure procedures within the preceding 12-month period after receiving a prior PAGA notice alleging a violation of the same code provision, regardless of the location of the worksite.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 1152,

Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code.

Subchapter 5. Pre-Litigation Notice and Investigation of Claims Arising Under Division 5 (Lab. Code, § 2699.3, subd. (b))

§ 17450. Written Notice by Aggrieved Employee or Representative.

(a) An aggrieved employee alleging safety and health violations of Division 5 (commencing with section 6300 of the Labor Code) pursuant to subdivision (b) of Labor Code section 2699.3 shall file a PAGA notice with the Agency using the form prescribed by the Agency and available on the online PAGA filing portal. The notice shall be filed in accordance with regulation 17410, subdivision (a)(1)(A). Upon proper filing of a notice, a case number will be assigned to the matter and sent to the claimant or claimant's representative by email as confirmation of the filing.

(b) A claimant's PAGA notice must be served in accordance with regulation 17413 on the employer against whom the notice is filed and be accompanied by proof of service showing the certified mail tracking numbers for all persons served.

(c) The Agency's prescribed PAGA notice form shall include fields for a claimant to provide the following required information:

(1)(A) The names of the claimant and employer;

(B) The dates of the claimant's employment with the employer;

(C) The position or title held by the claimant while employed with the employer;

(D) A short description of the claimant's job duties or work performed by the claimant while employed with the employer; and

(E) The address or a specific description of the location where the claimant worked or works and where the safety and health violations allegedly exist or existed.

(2)(A) The specific Labor Code sections in Division 5 allegedly violated by the employer;

(B) A short and plain statement of the facts and theories supporting each violation alleged and personally suffered by the claimant, including the date or dates of the violations and whether the violations alleged are continuing. If the claimant no longer is employed with the employer at the time of filing the PAGA

notice, the claimant shall state the basis for any contention a violation has occurred or is continuing during the time after claimant no longer worked with the employer. If the claimant contends a substantially similar violation as the violation personally suffered by the claimant is occurring at another worksite of the employer, the claimant shall state the basis for such contention, including the address or addresses where a violation occurred or is occurring and the date or dates of the violation, including whether the violation is continuing. Conclusory statements, generalized or vague allegations of violations without supporting facts particular to the claimant's circumstances or working conditions, or statements summarizing or restating the law or legal requirements are not sufficient. If the claimant is represented by a nonprofit legal aid organization, a qualified legal services project, or a qualified support center that meets the requirements of Labor Code section 2699, subdivision (c)(2), the notice shall specify which violations the claimant personally suffered, as well as the basis upon which claimant asserts any other violations the claimant did not experience but asserts on behalf of other employees; and

(C) For each violation alleged, the specific Labor Code sections providing the civil penalties the claimant seeks to recover.

(d) A claimant's PAGA notice must be signed by the claimant or claimant's representative. In signing the notice, the claimant or claimant's representative is certifying to the best of their knowledge, information, and belief, formed after a reasonable inquiry, the claims asserted (1) are not presented for an improper purpose, (2) have legal support, and (3) have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(e) No violation or theory of violation may be alleged in any civil action as supporting a cause of action or claim under PAGA or released in any settlement agreement in such an action unless the violation, including the facts and theories supporting the violation, has been alleged in a PAGA notice or amended PAGA notice and there has been compliance with the procedural requirements of these regulations and subdivisions (b) and (c) of Labor Code section 2699.3.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code.

§ 17450.5. Amendments to PAGA Notices.

(a) A claimant may amend a PAGA notice filed pursuant to subdivision (b) of Labor Code section 2699.3 and regulation 17450. An amended PAGA notice shall be filed with the Agency in accordance with regulation 17410, subdivision

(a)(1)(B) and served on the employer in accordance with regulation 17413. The amended notice must be signed by the claimant or claimant's representative and include the certification required by subdivision (d) of regulation 17450.

(b) An amended PAGA notice must include the information required by subdivision (c) of regulation 17450.

(c) Notwithstanding subdivision (a), a claimant may not amend a PAGA notice to add violations not alleged in a prior PAGA notice as part of, or at any time after the claimant has reached, a proposed settlement agreement with the employer in a pending civil action.

Note: Authority cited: Section 2699, Labor Code. Reference: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code.

§ 17451. Investigation; Citation.

(a) Upon receipt of a PAGA notice or amended PAGA notice providing the information required by subdivision (c) of regulation 17450 and giving the Division reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an aggrieved employee, the Division shall investigate the employment or place of employment. For purposes of this subchapter, a PAGA notice is not a "complaint" within the meaning of Labor Code section 6309, subdivision (a).

(b) The Division shall issue a citation to the employer if the Division believes the employer has violated any safety and health requirement under Division 5. The Division may not issue a citation more than six months after the occurrence of the violation. The occurrence of a violation is deemed to continue until the violation ceases. For violations of subdivision (b) of Labor Code section 6410, the occurrence of a violation is deemed to continue until it is corrected, the Division discovers the violation, or the duty to comply with the violated requirement ceases to exist.

(c) If the Division issues a citation, and determines the employer has corrected the violation, the Division shall provide notice to the claimant and employer within 14 days of certifying the employer has corrected the violation. The notice provided by the Division shall be served on the parties consistent with regulation 17413.

(d) If the Division does not issue a citation to the employer within the time permitted for doing so under subdivision (b), and the reason therefore is the Division's failure to commence an inspection or investigation of the safety and health violations alleged in the claimant's PAGA notice, the claimant may

commence a civil action on the same terms as provided in subdivision (c)(1)(D) of Labor Code section 2699.3 for alleged violations subject to that provision.

(1) For purposes of this subdivision, a “failure by the Division to commence an inspection or investigation” does not include circumstances where the Division has determined a PAGA notice is invalid or does not meet the requirements of Labor Code section 2699.3 and regulation 17450.

(2) An inspection or investigation for purposes of PAGA notices filed with the Division pursuant to Labor Code section 2699.3, subdivision (b) is deemed to commence upon the Division’s review of a PAGA notice. The Division electronically shall enter confirmation of the commencement of an inspection or investigation, including the date the inspection or investigation commenced, into the online PAGA Case Detail docket information for a particular case, available using the PAGA Case Search Web site at <<https://cadir.my.salesforce-sites.com/PagaSearch/>>, within 65 days of the postmark date of the claimant’s PAGA notice.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, 6309, 6317, Labor Code.

Subchapter 6. Submitting Court Filings, Proposed Settlements, and Other Documents to the Agency

§ 17460. Submitting Court Filings and Records to Agency; Service.

(a) The following documents related to civil actions that include claims under PAGA must be submitted to the Agency as follows:

(1) A file-stamped copy of the complaint that includes the case number assigned by the court in which the action is filed. The plaintiff shall submit the complaint in accordance with regulation 17410, subdivision (a)(5)(A) within 10 days after the complaint is filed in the court.

(2) A file-stamped copy of any amended complaint. The plaintiff shall submit any amended complaint in accordance with regulation 17410, subdivision (a)(5)(A) within 10 days after the amended complaint is filed in the court.

(3) Any proposed settlement that encompasses claims under PAGA. The plaintiff shall submit the proposed settlement and accompanying documents in accordance with regulation 17410, subdivision (a)(5)(B) on the same day or before the settlement is submitted to a court for approval pursuant to Labor Code section 2699, subdivision (s)(2). The proposed settlement and accompanying documents submitted to the Agency must comply with the

requirements of regulation 17461.

(4) Any judgment entered by the court or any other order, including an order or award entered during arbitration, that disposes of claims asserted under PAGA. The plaintiff shall submit the judgment or order in accordance with regulation 17410, subdivision (a)(5)(C) within 10 days after entry of the judgment or order.

(5) Any order either awarding or denying civil penalties under PAGA. The plaintiff shall submit the order in accordance with regulation 17410, subdivision (a)(5)(C) within 10 days after entry of the order.

(b) Submission of a document using the online PAGA filing portal does not constitute service of process on the Agency or any of its departments, divisions, commissions, or boards.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3 Labor Code.

§ 17461. Submitting Proposed Settlements of Civil Actions to the Agency; Notice to Other Persons with Pending Actions.

(a) A proposed settlement agreement submitted to the Agency pursuant to Labor Code section 2699, subdivision (s)(2) must include the following:

(1) A copy of the fully executed proposed settlement agreement;

(2) A motion or other request filed with the court seeking approval of the proposed settlement agreement, including all declarations or other documents filed with the court in support of the proposed settlement; and

(3) A copy of the notice issued under subdivision (b) accompanied by proof of service on all persons entitled to notice. If the parties have determined there are no persons entitled to such notice under subdivision (b)(1), the parties shall submit a joint statement to that effect.

(b)(1) The settling plaintiff must provide notice by email to all other persons who have actions pending against the same employer at the time the proposed settlement is filed in court. A settling plaintiff may obtain this information using the PAGA Case Search Web site available at <<https://cadir.my.salesforce-sites.com/PagaSearch>>. For purposes of this subdivision, the term "actions pending" includes all cases where a PAGA notice alleging violations by the employer has been filed and no settlement or court judgment reflecting a disposition of the case is entered. The settling defendant employer shall verify the list of other persons who have pending actions against the employer under

PAGA is accurate and complete.

(2) The notice required by this subdivision shall include the following:

(A) The case name, case number, and court where the civil action is pending.

(B) The LWDA case number (LWDA-CM-_____ -_) assigned to the plaintiff's underlying PAGA notice before commencement of the civil action in which the proposed settlement is filed.

(C) The date of any scheduled hearing where the court will consider whether to approve the proposed settlement. If the court where the civil action is pending offers a tentative ruling procedure in civil law and motion matters, the notice also must set forth the method for obtaining the court's tentative rulings and the time by which tentative rulings are available.

(D) A summary listing all claims asserted under PAGA and encompassed within the proposed settlement agreement.

(E) A statement in bold text of at least 12-point font reading: "**The plaintiff(s) and defendant(s) named in the lawsuit identified in this notice have reached a proposed agreement to settle claims asserted under the Labor Code Private Attorneys General Act of 2004 (PAGA). The proposed settlement agreement has been filed with the court where the action is pending. The proposed settlement agreement also has been submitted to the California Labor and Workforce Development Agency. A copy of the proposed settlement agreement is available online using the PAGA Case Search Web site, available at <<https://cadir.my.salesforce-sites.com/PagaSearch>>. The proposed settlement agreement will become final if approved by the court. This may impact or foreclose your ability to pursue claims against the same defendant(s).**"

(c)(1) The Agency shall be provided at least 45 days to review any proposed settlement agreement submitted to it in accordance with Labor Code section 2699, subdivision (s)(2). The parties shall not voluntarily consent to schedule any court hearing requesting approval of a proposed settlement agreement that provides the Agency less than 45 days to review the proposed settlement agreement.

(2) Any person entitled to notice of a proposed settlement agreement under subdivision (b) may submit comments to the Agency in support of or against the proposed settlement. Comments concerning a proposed settlement must be submitted to the Agency via email to <PAGAInfo@dir.ca.gov> within 21 days of the date of the notice described in subdivision (b). Any comments against the proposed settlement shall state the reasons therefor.

(d) The fact the Agency has not filed objections to a proposed settlement agreement in any given case shall not be construed as an approval or endorsement of the proposed settlement by the Agency.

(e) The parties shall include a copy of this regulation, and verify compliance with it, in any submission to the court requesting approval of a proposed settlement agreement under Labor Code section 2699, subdivision (s)(2).

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, Labor Code.

§ 17462. Proposed Settlements Before Commencement of a Civil Action; Release of Claims Against the Employer.

No settlement agreement between an employer and an employee that is reached after the employee has filed a PAGA notice with the Agency, but before the employee commences a civil action asserting claims under PAGA, may purport to release the employer from any PAGA claims belonging to the employee, the state, or any other person, or any claims belonging to the state or any other person.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, Labor Code.

§ 17463. Service of Process on the Agency; Requests to Facilitate Service.

(a) Service of documents on the Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, relating to any civil action under PAGA shall be effected in accordance with chapter 5 of title 14 of part 2 of the Code of Civil Procedure (Code Civ. Proc., § 1010 et seq.).

(b) A party to a civil action that includes claims under PAGA who seeks to serve the Agency with filings in the case may contact the Labor Commissioner's Office by email at <PAGAInfo@dir.ca.gov> to obtain instructions for facilitating service. A request to effect service on the Agency must comply with the following requirements:

(1) The subject line of the email shall state "Request to Serve Court Filings on LWDA."

(2) The body of the email shall:

(A) Clearly state the name of the court action, the court where the action is

pending, and the case number assigned to the action; and

(B) Describe the filings or other papers the party seeks to serve on the Agency and the purpose of serving the Agency. If the papers to be served on the Agency relate to any hearing already scheduled with the court, the party also shall provide the hearing date, time, location, and department at which the hearing will occur.

Note: Authority cited: Section 2699, Labor Code. Reference: Sections 2699, 2699.3, Labor Code.