

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
[PROPOSED] CHAPTER 9. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

NOTICE OF PROPOSED RULEMAKING

The California Labor and Workforce Development Agency (Agency) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Agency proposes to:

- Adopt new sections 17400, 17401, 17410, 17411, 17412, 17413, 17414, 17415, 17420, 17420.5, 17421, 17422, 17423, 17424, 17430, 17430.5, 17431, 17432, 17433, 17434, 17435, 17436, 17437, 17438, 17439, 17439.5, 17440, 17441, 17442, 17443, 17450, 17450.5, 17451, 17460, 17461, 17462, and 17463.

PUBLIC HEARING

The Agency has not scheduled a public hearing on this proposed action. However, the Agency will hold a hearing if it receives a written request for a public hearing from any interested person, or the representative of any interested person, no later than 15 days before the close of the written comment period. Requests for a hearing may be submitted to Danielle West, PAGA Rulemaking and Policy Analyst, whose information is below.

WRITTEN COMMENT PERIOD

Any interested person, or the representative of any interested person, may submit written comments relevant to the proposed regulatory action to the Agency. The written comment period closes on March 23, 2026, which is 45 days after the publication of this notice. The Agency will consider only comments actually received by that time. Written comments shall be submitted to:

Danielle West, PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, CA 95814

Comments also may be submitted by email to Danielle.West@labor.ca.gov.

AUTHORITY AND REFERENCE

Pursuant to Labor Code section 2699, the Agency is authorized to promulgate regulations to implement the provisions, and effectuate the purposes and policies, of the Labor Code Private Attorneys General Act of 2004 (PAGA), codified at Labor Code section 2698 et seq.

- General reference for **proposed section 17400**: Sections 2699, 2699.3, 2699.5, 2699.6, 2699.8, Labor Code;
- General reference for **proposed section 17401**: Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17410**: Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17411**: Sections 68632, 68633, Government Code; Sections 2699.3, Labor Code;
- General reference for **proposed section 17412**: Section 1, article 1, California Constitution; Section 1798.1, Civil Code; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17413**: Sections 1013a, 2015.5, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17414**: Sections 12, 12a, 135, Code of Civil Procedure; Section 6700, Government Code; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17415**: Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17420**: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17420.5**: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17421**: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17422**: Sections 90, 90.6, 2699, 2699.3, Labor Code;
- General reference for **proposed section 17423**: Section 11181, Government Code; Sections 90, 90.6, 91, 92, 93, 1174, 1174.1, 2699, 2699.3, Labor Code;
- General reference for **proposed section 17424**: Sections 90, 90.6, 2699, 2699.3, Labor Code;
- General reference for **proposed section 17430**: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17430.5**: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17431**: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;

- General reference for **proposed section 17432**: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17433**: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17434**: Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17435**: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17436**: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17437**: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17438**: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17439**: Sections 1152, 1154, Evidence Code; Sections 92, 98, 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17439.5**: Sections 1152, 1154, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17440**: Section 2015.5, Code of Civil Procedure; Section 1152, Evidence Code; Sections 226, 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17441**: Sections 226, 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17442**: Sections 1010.6, 1013b, 2015.5, Code of Civil Procedure; Sections 226, 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17443**: Section 1152, Evidence Code; Sections 2699, 2699.3, 2699.5, Labor Code;
- General reference for **proposed section 17450**: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17450.5**: Section 128.7, Code of Civil Procedure; Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17451**: Sections 2699, 2699.3, 6309, 6317, Labor Code;
- General reference for **proposed section 17460**: Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17461**: Sections 2699, 2699.3, Labor Code;
- General reference for **proposed section 17462**: Sections 2699, 2699.3, Labor Code; and

- General reference for **proposed section 17463**: Sections 2699, 2699.3, Labor Code.

POLICY STATEMENT OVERVIEW

Background and Overview of the Law

The Labor Code Private Attorneys General Act of 2004 (PAGA) is a landmark law enacted in 2004 to augment the state's limited staffing and resources and increase enforcement for violations of state labor standards. It achieves this goal by allowing employees to file lawsuits against their current or former employers to recover civil penalties for Labor Code violations that otherwise would be recoverable only by the state. A PAGA action is representative in nature, meaning that an employee who brings such claims may do so on their own behalf and on behalf of other employees who experienced the same violations. Any civil penalties recovered by an employee under PAGA are divided between the Agency and the aggrieved employees, which are allocated with 65% going to the Agency and 35% to the aggrieved employees. While individual employees may be deputized to act on behalf of the Agency when pursuing a lawsuit filed under PAGA, the law is not designed "to promote private enforcement without regard to the [Agency]." (*Esparza v. Safeway, Inc.* (2019) 36 Cal.App.5th 42, 61.) The California Supreme Court has stated PAGA's "sole purpose is to vindicate [the Agency's] interest in enforcing the Labor Code" (*Ibid.*, quoting *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 388-389.) Thus, a PAGA lawsuit is a law enforcement action in furtherance of the public interest, and penalties recovered under the law are intended to serve as a deterrent to future unlawful conduct. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 548.)

Before an employee may file a lawsuit against their current or former employer under PAGA, the employee first must provide notice both to the Agency and the employer describing the Labor Code violations alleged. This type of notice by an employee commonly is referred to as a "PAGA notice." This prelitigation notice obligation has been described as an "administrative exhaustion" requirement (*Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1056), and courts have stated that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit." (*Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 1003; see *Mora v. C.E. Enterprises, Inc.* (Oct. 21, 2025, B337830) 116 Cal.App.5th 72 [2025 WL 3214076, *8] [employees' PAGA notice did not satisfy administrative notice and exhaustion requirements because it did "not set forth the specific theories of liability . . . much less state any facts in support of those theories"].)

An employer is entitled, but not required, to respond to the PAGA notice and the violations alleged. After an employee files a PAGA notice with the Agency, several administrative processes may follow:

First, the Agency may investigate the allegations and either cite the employer for any violations found or choose to prosecute the alleged violations itself. The employee may file a lawsuit against the employer to recover civil penalties under PAGA if the Agency does not cite the employer or choose to prosecute the case itself within the periods allowed under PAGA. In these respects, the Agency has assigned to the Division of Labor Standards Enforcement, also known as the Labor Commissioner's Office, within the Department of Industrial Relations responsibility over the investigation and handling of PAGA notices alleging wage and hour violations.

Second, an administrative procedure to "cure," or correct, certain types of alleged violations is available to employers that employed less than 100 employees total during the one-year period before a PAGA notice is filed. If a violation or violations are not cured as a result of this prelitigation early resolution process, the employee may file a lawsuit against the employer based on any uncured violations after 65 days from the postmark date of the PAGA notice.

Third, a separate administrative cure process is available to all employers if the only alleged violation to be cured is a violation of Labor Code section 226 wage statement itemization requirements. As with the "small employer" cure process described above, an employee may file a lawsuit against the employer including the alleged wage statement violation if the employer fails to cure it during this administrative procedure after 65 days from the postmark date of the PAGA notice.

Fourth, if the employee's PAGA notice alleges health and safety violations, the Division of Occupational Safety and Health (Cal/OSHA) shall conduct an investigation of the claims.

In cases where an employee is authorized to file a lawsuit under PAGA, the employee does so on behalf of the Agency and the Agency is a real party in interest in such actions. (*Rose v. Hobby Lobby Stores, Inc.* (2025) 111 Cal.App.5th 162, 169, 173.) A plaintiff in a PAGA action is required to provide the Agency a copy of the complaint filed in court. The plaintiff also is required to submit to the Agency copies of any orders awarding or denying civil penalties, as well as a copy of a judgment entered by the court. Settlements of PAGA cases are subject to approval by the court, and a plaintiff also is required to submit the

proposed settlement agreement to the Agency at the same time it is submitted to the court. The purpose of these reporting obligations, and in particular the obligation that parties submit proposed settlement agreements to the Agency, is to increase the Agency's role in monitoring PAGA actions to ensure the interests of the state and other aggrieved employees are protected. (*Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 695-696; see also *California Business & Industrial Alliance v. Becerra* (2022) 80 Cal.App.5th 734, 748.)

The 2024 Legislative Reforms to PAGA and This Proposed Rulemaking

The proposed regulations implement the provisions of PAGA, as substantially amended by legislative reforms adopted in 2024. (Stats. 2024, ch. 44 [Assem. Bill No. 2288 (2023-2024 Reg. Sess.)]; Stats. 2025, ch. 45 [Sen. Bill No. 92 (2023-2024 Reg. Sess.)].) These proposed regulations are intended to provide guidance to parties and stakeholders regarding PAGA's prelitigation notice requirements and administrative procedures and to clarify the parties' obligations to the Agency after a PAGA lawsuit has been filed.

The 2024 reforms evince a legislative intent to increase Agency oversight of PAGA and provide more robust early resolution avenues for employers, both with a goal of achieving more timely remedies to make employees whole without the type of protracted and costly litigation that previously has led to criticism of the Act. (Sen. Com. on Jud., analysis of Assem. Bill No. 2288 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 1 [noting bill "increases the role of [LWDA] and better incorporates the available remedies, processes, and outcomes utilized or sought by [LWDA] in its enforcement efforts"].) This proposed rulemaking thus aims to improve administrative notice, procedural, and reporting requirements under the law consistent with these objectives, as described below:

- Administrative Notice Requirements: The proposed regulations provide greater clarity and guidance to parties regarding the requirements of a PAGA notice, particularly as it relates to articulation of the facts and theories alleged to support the Labor Code violations asserted. Before the 2024 reforms, an employee could allege violations in a representative capacity on behalf of other employees even if the employee did not personally experience the violations, so long as the employee experienced just one of the violations alleged. (*Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 754.) As a general rule after the reforms, an employee now may allege only violations the employee "personally suffered" within the year preceding the PAGA notice. (Lab. Code, § 2699, subd. (c)(1).) Improved articulation of the facts and theories supporting the violations alleged in a PAGA notice will

aid in the enforcement of new standing rules by allowing the Agency and other parties to more readily identify the bases for the violations alleged. In addition, better articulation of the facts and theories supporting the alleged violations will make new early resolution procedures before the Agency or a court operate more efficiently and effectively by providing greater clarity regarding the bases for the violations alleged so that an employer, as well as the Agency or a court, can more easily identify the nature of the violations alleged and those measures necessary to correct, or “cure,” them.

- Administrative Early Resolution (“Cure”) Procedures: Before the 2024 reforms, the law provided only a very limited opportunity to cure certain types of claims, particularly involving more technical wage statement itemization violations. The reforms expanded both the procedures available for curing violations and the types of violations subject to curing. (Assem. Com. on Jud., analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 13 [“The underlying rationale for both this measure and AB 2288 appears to be a goal of resolving PAGA disputes in a timelier manner. The cure and early evaluation conference provisions of this bill are designed to promote resolution of PAGA claims without protracted litigation”].) The reforms thus established two cure processes to be administered by the Agency and that are available before a lawsuit under PAGA can be filed. The most common types of Labor Code violations alleged in PAGA notices now are subject to cure using procedures before the Agency, including overtime, meal and rest period, and business reimbursement violations, among others. The proposed regulations implement these statutory early resolution procedures and are intended to provide greater guidance and direction to parties to ensure the efficient and effective functioning of these new administrative processes. And,
- Administrative Reporting Requirements: Consistent with the intent of increasing the Agency’s oversight and enforcement functions under the law, the proposed regulations provide better guidance to parties regarding their obligations when they propose to settle a lawsuit involving claims under PAGA. While the statute states a plaintiff must submit a proposed settlement agreement to the Agency at the same time it is submitted to a court for approval, the Agency’s ability to review a proposed agreement sufficiently is limited without additional materials to provide a context for the proposed agreement. (See *California Business & Industrial Alliance*, *supra*, 80 Cal.App.5th at p. 748.) Accordingly, to make the

Agency's oversight and review of proposed settlement agreements more effective, the proposed regulations require a settling plaintiff to submit to the Agency additional materials accompanying the proposed settlement agreement, including a copy of a motion and other documents, such as declarations, that are submitted to the court when seeking approval of a proposed settlement. In addition, the proposed regulations require a settling plaintiff provide notice to other employees who have pending PAGA claims against the same employer. These notice requirements will provide improved transparency and coordination of multiple PAGA actions involving a single employer and will better protect the interests of the state and other affected aggrieved workers to ensure any settlement of claims under PAGA is adequate, fair, and reasonable. (*Turrieta*, *supra*, 16 Cal.5th at p. 696.)

INFORMATIVE DIGEST

Anticipated Benefits of the Proposed Regulations

The proposed rulemaking is intended to implement the provisions of PAGA when an aggrieved employee intends to file a lawsuit, and later after filing a lawsuit, to recover civil penalties on behalf of the Agency against a current or former employer for Labor Code violations.

Notice Requirements

Current law requires an employee provide notice to the Agency and employer before the employee may proceed with a lawsuit. This notice is intended to give the Agency a "right of first prosecution" before an employee is authorized to sue. (*Williams v. Alacrity Solutions Group, LLC* (2015) 110 Cal.App.5th 932, 941, review granted July 9, 2025, S291199.) More specifically, this prelitigation notice requirement is intended to provide the Agency the ability decide whether to devote resources to investigating or prosecuting alleged violations. The notice also must provide the employer against whom the notice is filed sufficient information to identify the bases for the violations alleged, including to allow the employer to respond or attempt to resolve them.

An employee's PAGA notice must identify the "specific provisions" of the Labor Code the employer allegedly violated and include "the facts and theories" supporting each alleged violation. (Lab. Code, § 2699.3, subds. (a)(1)(A), (b)(1), (c)(1)(A).) Before the 2024 legislative reforms to PAGA, courts explained a PAGA notice "must be specific enough such 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, 882, quoting *Gunther v. Alaska*

Airlines, Inc. (2021) 72 Cal.App.5th 334, 351.) Thus, the notice must contain sufficient information to allow the Agency “to intelligently assess the seriousness of the alleged violations” and to give the employer enough information to understand the nature of the violations so it may decide “whether to fold or fight.” (*Ibarra, supra*, 102 Cal.App.5th at p. 881, quoting *Brown v. Ralph’s Grocery Co.* (2018) 28 Cal.App.5th 824, 837.) Proper notice to the employer informing it of the violations alleged enables the employer to submit a response to the Agency, which, in turn, further promotes informed agency decisionmaking whether to allocate resources to an investigation. (*Ibarra, supra*, 102 Cal.App.5th at p. 881.)

In practice, the nature of the PAGA notices received by the Agency in many cases fail to satisfy the purpose of the statutory notice requirement. One of the biggest contributors to this is the use of templates developed by some attorneys or law firms over time, which then are used to reproduce (in high volume) PAGA notices that repeat the same or similar allegations in a conclusory, boilerplate, or frivolous manner.

To illustrate these concerns, a total of 8,846 PAGA notices were filed with the Agency during fiscal year 2024-2025 (FY 24/25). During this one-year period (from July 1, 2024, through June 30, 2025):

- Five law firms filed a total of 2,086 PAGA notices—about one-quarter (24%) of all PAGA notice filings;
- Three law firms filed on average more than one PAGA notice per day, with one filing 605 notices, another filing 535, and the third filing 409;
- Four law firms filed more than 300 PAGA notices;
- Eight law firms filed more than 200 PAGA notices;
- Five attorneys filed a total of 1,571 PAGA notices, accounting for about 18%, or almost one-fifth, of all PAGA notices;
- Ten attorneys filed a total of 2,192 PAGA notices, accounting for about one-quarter (25%) of all PAGA notices; and
- One attorney filed 597 PAGA notices and another filed 368.

As noted, these attorneys and law firms generally use template PAGA notices they have developed, and these templates typically allege the same Labor Code violations in each case, often repeating the same conclusory descriptions of the violations alleged. This conduct impedes the Agency’s role under the law. In light of the volume of PAGA notice filings received by the Agency—including by a group of actors responsible for a disproportionate amount of all filings, the boilerplate nature of the filings in many cases impedes the Agency’s efforts to distinguish one case from another or “to intelligently assess” the scope or seriousness of the violations alleged in any given case. This frustrates the intent and purpose of the notice requirement to provide the Agency with sufficient

information to allow the Agency to determine whether to devote resources to any particular case for further investigation or prosecution. Nor do such generic PAGA notices provide employers sufficient information to understand the nature of the violations alleged against them so they may (1) take appropriate measures to correct, or cure, alleged violations, (2) implement appropriate measures to ensure prospective compliance with the law, or (3) formulate a response to the allegations or dispute them so as to further inform the Agency's administrative review and decisionmaking processes.

Accordingly, the proposed rulemaking includes provisions designed to implement and further the purpose of PAGA's administrative notice requirements and thereby improve the functioning of the law and the administrative processes it provides. The proposed regulations will standardize the format of PAGA notices to eliminate boilerplate and facilitate review of PAGA notices. The proposed regulations provide greater guidance concerning the content required in PAGA notices, including as it relates to describing the facts and theories supporting the violations alleged in a given case. Further, the proposed regulations include provisions aimed at implementing appropriate safeguards and deterring abusive practices under the law. Specifically, the proposed regulations (1) include additional notice and certification requirements applicable to "high-frequency" PAGA notice filers, i.e., those attorneys or law firms that have filed 200 or more PAGA notices in the preceding 12-month period, and (2) would require additional procedures for reviewing and screening PAGA notices filed by persons designated as "vexatious filers" based on repeated noncompliant, frivolous, or harassing PAGA filings.

This proposed regulatory action will benefit all parties in PAGA cases by providing greater clarity and guidance regarding PAGA's prelitigation notice requirements. This will result in improved articulation of the violations alleged in cases, aid the Agency's role in reviewing PAGA notices and ascertaining the nature and seriousness of the claims at issue, and assist employers in better understanding the nature of the violations alleged against them. These requirements will provide greater transparency in, and result in more efficient review and processing of, PAGA cases.

Cure Procedures

Current law establishes multiple procedures by which employers that have received PAGA notices may cure the violations alleged against them. These early resolution processes are designed to allow employers to identify and correct violations to resolve cases more efficiently without protracted and costly litigation. Two of these procedures are administered by the Agency during the notice period before an employee may file a lawsuit. One process is available to "small employers," which is defined as those that employed less than 100

employees total during the one-year period before a PAGA notice is filed. The most common types of Labor Code violations alleged in PAGA notices are subject to cure using this process, including overtime, meal and rest period, and business reimbursement, among others. The other administrative cure process involves violations of the wage statement itemization requirements listed in subdivision (a) of Labor Code section 226. This process is more streamlined than the process for curing other violations and is available to all employers regardless of size when this is the only type of violation to be cured.

The proposed regulatory action will benefit employee and employer stakeholders by providing greater clarity regarding the Agency's processing of employer cure notices or proposals and guidance regarding the parties' rights and obligations during such administrative proceedings. This will result in better transparency and improved efficiencies in the Agency's review and processing of employer cures consistent with the goals of the 2024 reforms to encourage and facilitate early resolution of cases.

Litigation Reporting Obligations

Current law allows an employee to file a lawsuit against their current or former employer to recover civil penalties under PAGA if the Agency does not cite the employer for the violations alleged or choose to prosecute the violations itself within the time required. In this regard, the Agency may provide notice to the parties within 65 days from the postmark date of the PAGA notice that it will investigate violations alleged in a PAGA notice. In such circumstances, the Agency has 120 days to investigate the claims. If no citation is issued during this time or the Agency does not file its own lawsuit to prosecute the violations, PAGA authorizes the employee to file their own lawsuit.

An employee filing a PAGA lawsuit does so on behalf of the Agency. Current law requires a PAGA plaintiff to submit to the Agency various court-related filings to facilitate the Agency's review and oversight of such actions, including a complaint, court orders awarding or denying civil penalties, court judgments, and proposed settlement agreements.

This proposed regulatory action will benefit employee and employer stakeholders by clarifying their litigation reporting obligations to the Agency and providing further guidance regarding the submission of documents to the Agency. This also will benefit the Agency, other aggrieved employees, and the public by aiding the Agency in the fulfillment of its role to monitor PAGA cases. By clarifying the scope of the parties' reporting obligations to the Agency with respect to proposed settlement agreements specifically, including the documents required to be submitted to the Agency, this proposed regulatory action also will benefit the public by enabling the Agency to review proposed

settlements more effectively to ensure they are fair and reasonable both to the state and other affected employees harmed by the employer's workplace violations.

Specific Amendments and Additions

This proposed rulemaking involves only the adoption of new regulations, as there currently are no regulations implementing or governing PAGA's administrative procedures and requirements. The following digest provides a concise summary of the regulations proposed to be adopted. Please refer to the proposed regulatory language and the Agency's initial statement of reasons in support of the proposed rulemaking for more information regarding the specific proposed regulations.

Proposed Subchapter 1. Scope and Application

Proposed section 17400 adds language defining the scope and application of the proposed regulations as governing procedures and requirements under PAGA.

Proposed section 17401 adds provisions defining terms commonly used in or applicable to actions brought under PAGA.

Proposed Subchapter 1.5. Filing and Service

Proposed section 17410 adds provisions instructing parties how to electronically file or submit documents in PAGA actions to the Agency using the online PAGA filing portal at <<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>>, including the proper hyperlink to use based on the type of document being filed or submitted. Consistent with the statutory scheme requiring electronic filing or submission of documents to the Agency, this proposed regulation also clarifies that a party consents to receive electronic communications or documents regarding a case unless otherwise provided by statute or regulation.

Proposed section 17411 adds provisions regarding the \$75 filing fee applicable when an aggrieved employee files a PAGA notice or an employer files a response, including a response that proposes to cure alleged violations or provides notice an alleged wage statement violation has been cured. This section also describes the process by which a party may request a waiver of applicable filing fees.

Proposed section 17412 adds language instructing parties to redact various forms of personally identifiable information from any documents submitted to

the Agency in PAGA matters, which generally are public records under the California Public Records Act, Government Code section 7920.000 et seq., subject to certain exceptions applicable to records related to administrative cure procedures.

Proposed section 17413 adds language instructing parties how to serve documents on other parties in PAGA proceedings before the Agency.

Proposed section 17414 adds language clarifying how timeframes and deadlines are calculated in PAGA proceedings conducted before the Agency. This section also clarifies that documents filed electronically with the Agency are deemed filed that same day, unless it is a weekend or holiday in which case the documents will be deemed filed the next business day.

Proposed section 17415 adds provisions governing high-frequency or vexatious PAGA filers. Certain filing practices have impacted the Agency's administration of the law and have frustrated the purposes of PAGA's administrative notice and investigation procedures, including attorneys who file PAGA notices that generally repeat boilerplate, conclusory, or frivolous allegations of Labor Code violations. This regulation would designate any attorney or law firm that has filed 200 or more PAGA notices in a 12-month period to comply with additional notice requirements, including providing a certification by the aggrieved employee that the employee has reviewed the PAGA notice and believes the allegations have support and are not intended for an improper purpose, such as to harass or annoy. This regulation also would allow the Agency to designate a person or attorney, after notice and an opportunity to be heard, as a vexatious filer on grounds the person or attorney has repeatedly filed PAGA notices that do not comply with legal requirements, including failing to adequately describe the facts and theories supporting the violations alleged or alleging violations that are frivolous or appear intended to harass. A person or attorney designated as a vexatious filer would be subject to a prefiling screening order, which would require the Agency to review a submitted PAGA notice for compliance with legal requirements before the notice is deemed accepted for filing. This regulation would require the Agency to maintain a list of all persons, attorneys, or law firms designated as high-frequency or vexatious filers. A person or attorney designated as a vexatious filer could petition the Agency to remove the designation after a period of six-months or such other time specified by the Agency.

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

Proposed section 17420 adds provisions describing the requirements for an aggrieved employee filing a PAGA notice alleging violations of wage and hour

requirements. This regulation describes the requirements for serving a PAGA notice on an employer. This regulation requires the Agency to prepare a prescribed “PAGA notice” form employees must use when filing claims under PAGA, and further describes the content required in a PAGA notice, including background information regarding the employee’s employment with the employer, specification of the Labor Code sections allegedly violated, the facts and theories supporting the violations alleged, and the basis for the civil penalties sought by the employee. In addition, an employee or attorney filing a PAGA notice must sign a certification stating the claims asserted are not presented for an improper purpose, have legal support, and have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for investigation and discovery. This regulation also adds provisions specifying that no violation, or theory of violation, may be alleged in any subsequent lawsuit by an employee or included in any settlement agreement unless the violation, or theory of violation, was included in a PAGA notice or amended PAGA notice and the procedural requirements of subdivisions (a) or (c) of Labor Code section 2699.3 have been satisfied.

Proposed section 17420.5 adds provisions describing the process by which an employee can amend a PAGA notice previously filed with the Agency. This regulation also clarifies that the 65-day review and 120-day investigation periods applicable to PAGA notices as set forth in statute also apply to amended PAGA notices. This regulation additionally would prohibit an employee from filing an amended PAGA notice adding new claims not previously alleged as part of, or after an employee has reached, a proposed settlement agreement with an employer in a pending civil action.

Proposed section 17421 adds provisions describing the process and requirements for an employer that seeks to file a response to a PAGA notice with the Agency. This regulation describes the electronic service requirements for an employer filing a response to a PAGA notice, and requires a PAGA notice be filed and served within 33 days after the employer receives a PAGA notice. This regulation also describes the content the response must include, including that it respond to each violation alleged and describe the basis for disputing any violation.

Proposed section 17422 adds language describing the requirements when the Labor Commissioner’s Office gives notice to the parties it will conduct an investigation of claims alleged in a PAGA notice. This regulation would require the Labor Commissioner’s Office to provide notice of an investigation to the parties by certified mail and require the notice identify the violations to be investigated and the period covered by the investigation.

Proposed section 17423 adds provisions governing investigations conducted by the Labor Commissioner's Office. This regulation describes the manner by which the Labor Commissioner's Office may conduct an investigation, including interviewing the employee who filed by the PAGA notice. This section further describes the authority of the Labor Commissioner's Office to issue interrogatories to an employer, inspect or copy an employer's records, issue subpoenas to witnesses, and take depositions or affidavits of witnesses during the course of an investigation.

Proposed section 17424 adds language describing the authority of the Labor Commissioner's Office to issue citations or commence a lawsuit based on violations determined to exist following an investigation of claims alleged in a PAGA notice. This regulation also would clarify an employee that filed a PAGA notice may not proceed with a lawsuit under PAGA if the Labor Commissioner's Office has issued a citation to the employer or commenced an action to prosecute violations itself.

Proposed Subchapter 3. Small Employer Cure Proposals

Proposed section 17430 adds provisions describing the requirements for an employer submitting to the Agency a confidential proposal to cure violations alleged in a PAGA notice. This regulation specifies a cure proposal need not be served on an employee, but if the employer does serve the employee it shall do so electronically and provide proof of service to the Agency. This regulation provides a cure proposal must be submitted to the Agency within 33 days after the employer receives a PAGA notice or an amended notice alleging violations not alleged in an earlier notice, and requires an employer to identify the date it received the PAGA notice or amended PAGA notice. This regulation also describes the employees that must be counted in determining whether the employer employed less than 100 employees during the one-year period before it received a PAGA notice to be eligible for this administrative process, and further would allow the Agency to decline a proposal or conclude cure proceedings if separate business entities may constitute a single enterprise or joint employer and the total number of employees between the multiple entities would total 100 or more. This regulation additionally describes the content required in a cure proposal, including that the employer include a statement of the actions it intends to take to cure each alleged violation encompassed by its proposal, and additionally specifies a cure proposal is considered a confidential settlement communication.

Proposed section 17430.5 adds language clarifying an employer's ability to cure violations alleged in a PAGA notice when the employer has cured violations in response to an earlier PAGA notice within the previous 12 months.

Proposed section 17431 adds provisions describing the nature of the Agency's review of an employer's cure proposal, including the Agency's notice to an employer in circumstances where the Agency has determined not to select a matter for conference because the proposal is not sufficient to cure alleged violations or some other defect is present (e.g., the employer is not eligible to use the small employer cure process or the proposal was not timely submitted).

Proposed section 17432 adds provisions describing the requirements when the Agency has determined an employer's cure proposal is facially sufficient to cure the violations addressed or that a conference would assist in determining if a sufficient cure is possible. This regulation sets forth the requirements for the Agency when providing parties written notice that a cure conference will be held, including the contents of a notice in setting the time, date, and location of the conference. This regulation further requires a notice of cure conference to identify the dates by which the parties are required to submit preconference statements to the Agency, as well as any other records requested to be produced. This regulation also describes the process by which parties may request continuances or reasonable accommodation. This regulation also would specify that an employee may not commence a civil action based on claims alleged in a PAGA notice while the Agency's cure review process remains pending.

Proposed section 17433 adds provisions regarding an employer's and employee's obligations in preparing for a cure conference, including specifically regarding the filing and service of preconference statements. This regulation describes the requirements for filing and serving preconference statements and the required contents or accompanying records to be included with each party's preconference statement. This regulation also states the Agency's authority and discretion to cancel a conference when an employer fails to file a preconference statement, or to disregard allegations or facts an employee fails to articulate in a preconference statement as a basis for disputing the sufficiency of an employer's cure proposal, provided the allegations or facts are of a nature of which the employee was aware or should have been aware at the time. This regulation also specifies the parties' preconference statements are deemed confidential settlement communications.

Proposed section 17434 adds provisions regarding the conduct of a cure conference. This regulation describes the format of a cure conference and the persons whose attendance at a conference is required. This regulation would require the Agency to terminate the conference process based on the failure of an employer representative to attend, absent good cause shown. This regulation also would preclude an employee from disputing the sufficiency of an employer's cure proposal or the measures determined by the Agency to be

necessary to cure an alleged violation where the employee fails to attend a conference, absent good cause shown. This regulation also describes the manner in which the Agency proceeds when it is determined a sufficient cure is possible for violations alleged in a PAGA notice, including the memorialization of the required cure measures in a written plan provided to the parties.

Proposed section 17435 adds provisions describing the requirements for an employer to cure violations pursuant to a cure plan reached after a cure conference with the Agency. This regulation describes the time in which the employer must complete the prescribed cure measures and the form of the notice the employer must provide to the Agency and employee regarding the completed cure measures.

Proposed section 17436 adds language describing the Agency's review of an employer's notice it has completed measures required to cure alleged violations, including the time in which the Agency must issue a determination verifying whether an employer's cure is complete. If the Agency during its review of an employer's cure notice finds an aspect of the cure remains incomplete, this regulation would allow the Agency to request the employer complete those aspects of the cure. This regulation also describes the manner in which the Agency notifies the parties whether the Agency has verified an employer has cured violations or, if not, which violations are not deemed cured and why.

Proposed section 17437 adds language describing the process by which an employee may dispute an Agency determination an employer has cured violations. This regulation describes the time in which an employee must file and serve a request for a hearing to dispute the Agency's cure determination, as well as what the employee's request for a hearing must include. Specifically, this regulation would require an employee file and serve a hearing request within 10 days after the Agency issues its cure determination, and the request must identify each violation the claimant disputes is cured and state the factual basis supporting each dispute. This regulation would provide the Labor Commissioner's Office must dismiss, in whole or in part, a cure hearing request that does not comply with these requirements.

Proposed section 17438 adds language describing the requirements when the Labor Commissioner's Office issues the parties a written notice of the scheduling of a cure hearing when an employee has filed a cure hearing request. This regulation describes the time in which the Labor Commissioner's Office will issue notice of a cure hearing and when the cure hearing will be held. This regulation describes the required contents of a cure hearing notice, including the time, date, and location of the hearing, as well as the process by which parties may request continuances or any reasonable accommodation.

Proposed section 17439 adds provisions governing the conduct of a cure dispute hearing held by the Labor Commissioner's Office. This regulation describes the parties' rights at hearing and rules governing the presentation of witnesses and evidence.

Proposed section 17439.5 adds provisions regarding the time in which the Labor Commissioner's Office must issue a determination regarding the adequacy of a cure completed by the employer and the manner in which that determination is served on the parties.

Proposed Subchapter 4. Wage Statement Cure Procedures

Proposed section 17440 adds provisions setting forth the requirements by which an employer may provide notice to the Agency and employee it has cured a violation of wage statement itemization requirements. This regulation describes what an employer's cure notice must include and the manner by which it must be filed with the Agency and served on the employee. This regulation also describes the Agency's review of a cure notice in situations where an employee does not dispute the cure action taken by the employer, including the Agency's issuance of a determination regarding an employer's cure notice in such situations.

Proposed section 17441 adds provisions describing the requirements when an employee disputes the sufficiency of actions taken by an employer to cure a wage statement violation. This regulation prescribes the time in which an employee must file a cure dispute notice with the Agency and serve the notice on the employer. This regulation also sets forth the information that must be included in an employee's cure dispute notice.

Proposed section 17442 adds provisions describing the process by which the Agency will review an employer's wage statement cure notice in cases where the employee disputes the sufficiency of the employer's cure. This regulation describes the time in which the Agency must issue a determination whether the employer's cure is sufficient. This regulation also describes the requirements and procedures applicable when the Agency determines an employer's cure is insufficient, including circumstances where the Agency allows the employer additional time to complete the cure. This regulation also would specify that an employee may not commence a civil action based on claims alleged in a PAGA notice while the Agency's cure review process remains pending.

Proposed section 17443 adds language clarifying an employer's ability to cure violations alleged in a PAGA notice when the employer has cured violations in response to an earlier PAGA notice within the previous 12 months.

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

Proposed section 17450 adds provisions governing the requirements for an employee filing a PAGA notice that alleges violations of health and safety requirements. This regulation describes the requirements for serving a PAGA notice on an employer. This regulation requires the Agency to prepare a prescribed “PAGA notice” form employees must use when filing claims under PAGA, and further describes the content required in a PAGA notice, including background information regarding the employee’s employment with the employer, specification of the Labor Code sections allegedly violated, the facts and theories supporting the violations alleged, and the basis for the civil penalties sought by the employee. In addition, an employee or attorney filing a PAGA notice must sign a certification stating the claims asserted are not presented for an improper purpose, have legal support, and have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for investigation and discovery. This regulation also adds provisions specifying that no violation, or theory of violation, may be alleged in any subsequent lawsuit by an employee or included in any settlement agreement unless the violation, or theory of violation, was included in a PAGA notice or amended PAGA notice and the procedural requirements of subdivisions (b) and (c) of Labor Code section 2699.3 have been satisfied.

Proposed section 17450.5 adds provisions describing the process by which an employee can amend a PAGA notice previously filed with the Agency that alleges health and safety violations. This regulation additionally would prohibit an employee from filing an amended PAGA notice adding new claims not previously alleged as part of, or after an employee has reached, a proposed settlement agreement with an employer in a pending civil action.

Proposed section 17451 adds provisions describing applicable procedures when the Division of Occupational Safety and Health (Cal/OSHA) conducts an investigation of alleged health and safety violations. This regulation also describes the periods in which Cal/OSHA shall conduct its investigation and issue a citation, if appropriate. This regulation also describes the procedures applicable when Cal/OSHA does not conduct an investigation, including the circumstances and periods after which an employee is permitted to commence a civil action under PAGA.

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

Proposed section 17460 adds provisions clarifying the obligations of an employee that has filed a lawsuit including claims under PAGA to submit documents to the Agency, including complaints, amended complaints, orders or judgments, and proposed settlements, including the times in which such documents must be submitted to the Agency and instructions for submitting documents using the online PAGA filing portal. This regulation also specifies that submitting documents using the online PAGA filing portal does not constitute service of process on the Agency.

Proposed section 17461 adds provisions clarifying the obligations of an employee in a PAGA lawsuit when providing notice of a proposed settlement agreement and submitting that proposed agreement to the Agency. This regulation sets forth the documents required to be submitted to the Agency with a proposed settlement agreement filed in the court, including a notice to other employees with pending actions against the same employer regarding the proposed settlement. This regulation also describes the process for other employees with pending PAGA actions against the same employer to submit comments in favor of or against the proposed settlement, and specifies the Agency must be provided at least 45 days to review a proposed settlement agreement.

Proposed section 17462 adds language clarifying that a private agreement between an employee and employer after the employee has filed a PAGA notice against the employer, but before filing a PAGA lawsuit, cannot release the employer from claims under PAGA or purport to release claims belonging to the state or other persons.

Proposed section 17463 adds provisions describing the process by which a party to a PAGA lawsuit may serve litigation-related documents on the Agency. This regulation also explains procedures by which a party may contact the Agency to facilitate service in connection with a pending lawsuit.

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

The Agency has determined the proposed regulatory adoptions are not inconsistent or incompatible with existing regulations. There are no other regulations adopted by any other state agency that affect the procedures encompassed by the proposed regulatory adoptions. Thus, the Agency has concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

NO EXISTING AND COMPARABLE FEDERAL REGULATION OR STATUTE

The Agency has determined there are no existing, comparable federal regulations or statutes addressing the matters encompassed by this regulatory action. PAGA is a state law authorizing aggrieved employees to recover civil penalties on behalf of the state for violations of state labor laws. Accordingly, the Agency has concluded these regulations are neither inconsistent nor incompatible with existing federal regulations or statutes.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Agency has made the following initial determinations:

Mandate, cost or savings imposed on local agencies and school districts: The proposed action will not impact local agencies or school districts, result in any costs or savings to local agencies or school districts, or impose any new mandate on local agencies or school districts that must be reimbursed pursuant to Government Code section 17500 et seq.

Cost or savings to state agency: The proposed action will result in additional costs to the Agency in administering the small employer cure procedures under Labor Code section 2699.3, subdivision (c)(2). However, such additional costs, to the extent they emerge from these rules and not the statutes they interpret, are negligible and can be absorbed within existing budgets and resources. Having rules in place may even ultimately save the Agency money as compared to operation of the statute without clear standards.

Non-discretionary cost or savings imposed upon local agencies: The proposed action will not result in any non-discretionary cost or savings to local agencies.

Cost or savings in federal funding to the state: The proposed action will not result in any new costs or savings in federal funding to the state.

Cost impact on private persons or directly affected businesses: A representative private person or business would incur minimal costs as a result of compliance with the proposed action, which in the context of administering the small employer cure procedures under Labor Code section 2699.3, subdivision (c)(2) are expected to be offset by larger cost savings as a result of resolving claims early and avoiding more costly and time-consuming litigation.

Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The proposed action will have no significant adverse economic impact on California businesses.

Significant effect on housing costs: The proposed action will have no effect on housing costs.

Business Reporting Requirement: The proposed action will not require a report to be made.

Small Business Impact: The Agency has determined the proposed regulations will not affect small business because the proposed regulations will not result in any additional costs or burdens on small businesses. Although small businesses electing to participate in procedures to cure violations under Labor Code section 2699.3, subdivision (c)(2) would incur additional, minimal costs as a result of compliance with procedures described in this proposed rulemaking, such costs are expected to be offset by larger cost-savings as a result of resolving claims early and avoiding more costly and time-consuming litigation.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The proposed regulations implement and clarify procedures to comply with obligations already enacted in statute. The Agency concludes that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

BENEFIT ANALYSIS

The Agency currently lacks regulations offering guidance to parties regarding the administrative processes that take place after a PAGA notice has been filed with the Agency and before a lawsuit may be filed. By providing clear guidance to affected stakeholders regarding the requirements for filing notices with the Agency and the Agency's administrative procedures, including the parties' rights and obligations in such proceedings, the Agency's proposed regulatory action will improve the administration of PAGA. The proposed regulations thus will benefit workers and employers.

The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the state's environment. The proposed regulatory action will further the policies of increasing enforcement of state labor laws while facilitating the early resolution of disputes consistent with PAGA's purposes. California residents' general welfare will be benefitted by more effective labor law enforcement and dispute resolution, which translates to healthier and safer workplaces for all Californians.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), a rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

No reasonable alternatives to this proposed rulemaking have been identified or brought to the Agency's attention that would be more effective, as effective and less burdensome, or more cost-effective and equally effective in carrying out the purpose for which this action is proposed. The Agency invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at any scheduled hearing if one is requested.

CONTACT PERSONS

Any questions or suggestions regarding the proposed action should be directed to:

Danielle West, PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, CA 95814
Email: Danielle.West@labor.ca.gov

The backup person for these inquiries is:

Alisa Melendez-Collier, PAGA Unit Supervisor
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, CA 95814
Email: Alisa.Melendez-Collier@labor.ca.gov

Please direct requests for copies of the proposed text (i.e., the express terms) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Danielle West, PAGA Rulemaking and Policy Analyst, at the above address.

PRELIMINARY ACTIVITIES

The Agency has determined the proposed regulatory action is neither complex nor involves a large number of proposals such that the proposed regulations could not be reviewed sufficiently within the prescribed public comment period.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Agency will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations and the initial statement of reasons with appendices. Copies of these documents may be obtained by contacting Danielle West, PAGA Rulemaking and Policy Analyst, at the above address and are also available on the Agency's Web site at <https://www.labor.ca.gov/resources/paga/rulemaking>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if one is requested, and considering all timely and relevant comments, the Agency may adopt the proposed regulations substantially as described in this notice. If the Agency makes modifications that are sufficiently related to the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the Agency adopts the regulations as revised. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Danielle West, PAGA Rulemaking and Policy Analyst, at the above address. The Agency will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Danielle West, PAGA Rulemaking and Policy Analyst, at the above address or accessed on the Agency's Web site as set forth below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice of proposed rulemaking, the initial statement of reasons, and the text of the proposed regulations in underline and strikeout, can be accessed on the Agency's Web site at

<<https://www.labor.ca.gov/resources/paga/rulemaking>> throughout the rulemaking process. Written comments received during the written comment period also will be posted on the Agency's Web site. The final statement of reasons or, if applicable, notice of a decision not to proceed will be posted on the Agency's Web site following the Agency's action.