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VIA E-MAIL ONLY

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Re: Public Comment on LWDA Proposed Regulation No. 17415

Ms. West,

Bibiyan Law Group, P.C. respectfully submits this comment to section 17415 of the proposed Labor Code Private Attorneys' General Act of 2004 ("PAGA") regulations. The Agency's objective of improving administrative efficiency is an important one. However, the proposed designation of "high frequency" filers based solely on aggregate notice volume within a one-year period, as well as the "vexatious filer" designation, risk unintentionally undermining the PAGA's legislative intent without effectively reducing administrative burden flagged by the Agency as the impetus for its adoption.

1. Filing Volume is Not a Reliable Proxy for Conclusory or Boilerplate Allegations

The stated rationale for the proposed regulation is concern that some PAGA notices contain repetitive or boilerplate allegations. Aggregate filing volume, however, does not rationally correlate with notice quality or factual specificity. If the Agency's objective is to reduce conclusory or unsupported notices, the appropriate regulatory focus should be on content-based criteria. A quantity-based approach, rather than a quality-based one, risks suppressing meritorious enforcement activity without material improvement of the informational value of notices submitted.

2. The Use of Templates Does Not Signal Abuse, nor is it Exclusive to High Volume Filers

Templates are a standard feature of modern legal practice across all areas of litigation, with many such templates created and endorsed by the Judicial Council of California itself. The use of standardized drafting tools is merely a feature of modern practice; it is not a signal for abuse, nor is it exclusively used by high volume or "vexatious" filers.

3. Firm-Level Numerical Thresholds are Arbitrary and Misallocate Administrative Scrutiny

The proposed threshold does not differentiate between law firms and solo practitioners. A large firm that files a substantial number of notices collectively may have relatively modest filing activity per attorney, while very small firms or solo practitioners may exhibit substantially higher filing concentration when measured on a per-attorney basis. Tables 1 and 2 below illustrate this distinction using publicly available filing data and attorney counts from firm websites. It counts notices of pertinent filers going back one year from March 16, 2026. Table 1 includes four law firms that would garner a high-frequency designation if the law were implemented today, while Table 2 includes four very small practices that would not earn the designation under the proposed regulation. Their names have been redacted but may be provided upon request.

Table 1

Firm	Total Notices	Approx. Attorneys	Notices per Attorney
Firm 1	349	35	9.97
Firm 2	383	50	7.7
Firm 3	239	41	5.8
Firm 4	253	46	5.5

Table 2

Firm	Total Notices	Approx. Attorneys	Notices per Attorney
Firm 5	180	1	180
Firm 6	104	2	52
Firm 7	46	1	46
Firm 8	28	1	28

The law firms identified in Table 1 each file less than ten notices per attorney staffed in a one-year period. This is far below the threshold of 200 notices per attorney proposed by the Agency. Table 2 identifies lawyers who have up to *18 times* that amount. Yet, under the plain language of proposed Regulation 17415, those firms would not receive a damaging label or must face a heightened presentment standard.

Thus, a firm-level metric as opposed to one focused per attorney risks arbitrariness, including, for instance, by penalizing an attorney merely for associating with a new law or large law firm or penalizing an employee for choosing a better staffed law firm for presentment of their PAGA Matter. This may have the unintended effect of discouraging attorney mobility and, thereby, limiting competition, as well as limiting employee choice. It may also have the unintended effect of disincentivizing participation by firms with the resources to prosecute complex matters through trial.

4. Risk of Chilling Statutorily Intended Enforcement Through "Vexatious" Designation

Labeling counsel as "vexatious" at the administrative notice stage presents substantial risk to the enforcement model underlying the statute, too. Employees frequently lack access to employer-controlled information at the outset of a case. The California Supreme Court has recognized that requiring heightened factual proof prior to discovery would undermine the legislative purposes of the statute. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 546.) Imposing reputational or procedural consequences for failing to meet an undefined factual standard creates a practical compliance gap.

The Notice of Proposed Rulemaking asserts that the regulations will "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." Yet Proposed Section 17420—the sole provision addressing the issue—merely reiterates that notices must include "the facts and theories supporting the violations alleged," without articulating any standard by which sufficiency will be measured. As a result, the proposal may be understood as increasing the consequences of noncompliance without a corresponding increase in clarity as to what is required for compliance. This creates uncertainty for practitioners attempting in good faith to meet the Agency's expectations, particularly at a stage where relevant information is largely in the possession of an employer.

Compounding the concern, the LWDA states that it intends to "standardize the format of PAGA notices to eliminate boilerplate and facilitate review of PAGA Notices." If all practitioners are required to utilize an agency-mandated form, the concept of "boilerplate" becomes inherently ambiguous. Moreover, if the Agency plans to put forth its own template for PAGA Notices, the rationale for the "high frequency" designation rooted in templated notices becomes further attenuated. These further underscore the importance of articulating clear, objective, and administrable standards so that practitioners can conform their conduct to the Agency's expectations, rather than attempting to infer those expectations *ex post*.

The practical consequences are not hypothetical. Since the mere introduction of these proposed regulations, our Firm has already received extortionate threats. One notable example comes from a defendant-employer represented by an attorney from an AmLaw 100 Firm. That attorney indicated that she is in contact with the Agency and that, absent immediate resolution on terms favorable to the employer, our Firm risks being labeled "vexatious," thus using the threat of this administrative designation to gain a litigation advantage. A redacted copy of that email is attached.

While this may not be the Agency's intent, it illustrates how the proposed designation could be weaponized. The potential for abuse, illustrated here, risks turning the Agency into an unwitting accomplice for the evisceration of the legislative intent behind the PAGA. It far outweighs any putative benefit for the implementation of this regulation. Indeed, the mere possibility of a "vexatious" designation operates as a deterrent not only to filing claims, but to accepting representation in PAGA matters in the first instance. Competent counsel will be disincentivized from undertaking representation to avoid exposure to reputational harm, damaging labels that can span to other litigation, or collateral consequences based on undefined standards applied before discovery can occur. In this way, the proposal may inadvertently discourage participation in the enforcement mechanism the Legislature intended PAGA to promote.

5. Proposed Revisions

The Agency's stated objectives—improving notice quality and facilitating efficient administrative review—can be advanced through revisions that emphasize clarity, consistency and feasibility at the pre-discovery stage. In that spirit, the following considerations may assist in refining the proposal framework:

1. Regulations could articulate a clear and objective standard for what constitutes sufficient "facts and theories," including illustrative examples. Providing such guidance would enable practitioners to conform their notices to the Agency's expectations in a predictable and uniform manner.

2. Any evaluation of notice sufficiency should expressly account for the information asymmetry inherent at the pre-discovery stage. Clarifying that notices are not expected to include employer-controlled data, and that reasonable inferences based on employee experience are sufficient, would align the regulations with existing Supreme Court guidance.

3. The Agency may wish to consider implementing a notice-and-opportunity-to-cure mechanism, similar to that afforded to employers, before any adverse designation is applied. Such a process would further the goal of improving notice quality while avoiding unintended deterrence of good-faith filings.

4. If volume- based are nevertheless retained, consideration should be given to evaluating activity at the individual attorney level to reduce arbitrariness.

These revisions would ensure practitioners are provided with a clear framework for compliance. In turn, this would promote administrative efficiency while preserving PAGA's intended role as an effective enforcement mechanism.

Sincerely,

BIBIYAN LAW GROUP, P.C.

/s/ David D. Bibiyan
David D. Bibiyan

Attachment: Redacted Email.

[redacted]

Fri, Mar 6, 2026 at 3:03 PM

Hi David,

Happy Friday. I hope you're gearing up for a nice weekend.

I wanted to provide a quick update. Another (third) firm is planning to file a class action. We have been negotiating with both firms and are close to reaching a reasonable compromise with one based on the Company's financial position, compliant policies, high meal rest break compliance rates, and the enforceability of the Company's arbitration agreement, which I understand you now concede. We also shared all the records we produced in this case and are confident and Court would approve the settlement based on the records provided and financial circumstances.

As a professional courtesy given that you were the first to file, we would like to renew our offer to settle with your firm. Based on the Company's financial records and CPA analysis, [redacted] represents a significant threshold, but in the interest of good faith and resolution, the Company is willing to settle for [redacted]. Please keep in mind that the financial records produced show the Company profited [redacted] ***last year across all locations***. You are quite literally stealing from the poor, who, by the way, provide jobs for [redacted] people. Forcing them to go out of business does not advance anyone's interest but instead would jeopardize the livelihoods of many blue-collar workers who desperately need their jobs.

If you decline our offer—which, of course, is your prerogative—please be aware that we will proceed with finalizing a settlement with the other firm. While you could attempt to negotiate a share of that settlement, given the relatively modest amount at issue compared to your firm's typical matters, it may be more advantageous to resolve this directly to retain the full share of attorneys' fees. Please let us know how you plan to proceed.

If you intend to continue pursuing this case while we finalize settlement with the other firm, please note that we have been in contact with the LWDA, which has expressed significant interest in the outcome here, particularly given your firm's anticipated designation as a vexatious filer under the proposed PAGA reforms. There is also anticipated media attention regarding the impact of repetitive or vexatious PAGA filings on small businesses, which the Company is prepared to speak to if necessary. While we do not wish to escalate matters unnecessarily, continued litigation could attract attention in ways that may not serve anyone's interest here, including your firm's, particularly given its small business partnerships. However, our hope is that we can wrap this up so everyone can focus their efforts on more important things and cases.

We look forward to hearing from you.

[redacted]

[redacted] [redacted]

Best,

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