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Scott Voelz
D: +1 213 430 6680
svoelz@omm.com

VIA E-MAIL AND U.S. MAIL

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

**Re: Comment on Proposed Rulemaking:
Labor Code Private Attorneys General Act Regulations**

Dear Ms. West:

I submit this comment in response to the Notice of Proposed Rulemaking published by the California Labor and Workforce Development Agency (“LWDA” or the “Agency”) regarding the adoption of new sections 17400 through 17463 of Title 8, Division 1, Chapter 9 of the California Code of Regulations. These sections aim to implement and clarify the Labor Code Private Attorneys General Act of 2004 (“PAGA”), as amended by the 2024 legislative reforms. I appreciate the opportunity to submit written comments before the comment period closes on March 23, 2026.

The 2024 reforms reflect a clear legislative intent to strengthen Agency oversight and reduce protracted, unnecessary, and abusive private litigation. While the proposed regulations advance these objectives in many respects, they also present the opportunity for the Agency to clearly articulate the outer limits of PAGA’s reach—specifically, the proposed regulations can provide a clear statement that app-based transportation and delivery drivers deemed independent contractors under California Business and Professions Code section 7451(a)–(d) (“Proposition 22”) cannot bring PAGA representative actions on behalf of the State.

Addressing this issue is essential to achieving the reforms’ objective of clarity. In the absence of a clear statement that PAGA claims cannot be brought by app-based drivers properly classified as independent contractors under Proposition 22, compliant network companies will continue to incur costs defending meritless PAGA actions. This unnecessary litigation undermines the efficiencies and procedural safeguards that the 2024 reforms and this rulemaking are intended to foster.¹

¹ As the Initial Statement of Reasons In Support of Regulatory Action itself states, the 2024 reforms introduced “new standing restrictions [that] are consistent with an intent to curtail abusive practices and ‘unjust lawsuits that hurt employers,’ while making PAGA actions more manageable and limited in scope.”

I set forth below the basis for my understanding of the LWDA's current position on this issue and my specific requests for clarification within both the proposed regulations and in the other public-facing communications and statements of the Agency. I believe a clarification in the regulations themselves is warranted to expressly foreclose contrary positions that have been advanced by some parties in litigation or threatened litigation, which seem to prey on the lack of on-point legal authority to advance claims not consistent with a proper reading of the statutory framework or the Agency's positions.

The LWDA's Position on Proposition 22 and App-Based Driver Claims

Based on the LWDA's public statements and positions taken in litigation, my understanding is that the LWDA interprets Proposition 22 to mean that the Agency lacks jurisdiction to enforce Labor Code provisions for app-based drivers who are deemed to be classified as independent contractors under Proposition 22.

Specifically, on the LWDA's website, the Agency makes clear that "[a]n app-based driver for a delivery or transportation network company is an independent contractor and not an employee" as long as the four elements set forth under Proposition 22 are satisfied.² See Frequently Asked Questions on AB 5, Question 4, available at <https://www.labor.ca.gov/employmentstatus/faq/> (last accessed on March 11, 2026). When addressing this test in the context of discussing the enforcement actions against Uber and Lyft, the California Department of Industrial Relations states that:

Under current law, the Labor Commissioner lacks authority to enforce driver claims to enforce rights founded upon Prop 22 (such as the guarantee to pay drivers 120% of the applicable minimum wage for "engaged time," or the provision under which drivers exceeding specified amounts of "engaged time" are entitled to a health insurance stipend). To the extent that an app-based driver does not meet the test for independent contractor status under Prop 22, the Labor Commissioner would

The proposed regulations also call for changes in the notice process to provide greater clarity. As discussed in the Initial Statement: "Improved clarity and guidance in terms of the requirements of the PAGA notices also will 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." The proposals outlined herein further these goals.

² Under Proposition 22, an app-based driver is an independent contractor as long as a delivery network company does not: "[1] Unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform[;] [2] Require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform[;] [3] Restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time[; or] [4] Restrict the app-based driver from working in any other lawful occupation or business." See Frequently Asked Questions on AB 5, Question 4, available at <https://www.labor.ca.gov/employmentstatus/faq/> (last accessed on March 11, 2026).

have jurisdiction to hear and adjudicate claims based on the Labor Code concerning post-December 15, 2020 conduct.

See Labor Commissioner’s Wage Theft Lawsuits against Uber & Lyft, available at <https://www.dir.ca.gov/dlse/Lawsuits-Uber-Lyft.html> (last accessed on March 11, 2026).

This statement is consistent with the State’s litigation position in these actions. In October 2024, in connection with this ongoing litigation, California’s Labor Commissioner took the position that “the relief sought . . . [would] not extend beyond December 15, 2020”—the date before Proposition 22 became effective—because “Proposition 22 created a different test for [determining employee or independent contractor status] for app-based drivers.”³

This position—that claims of app-based drivers fall outside the Labor Code when their relationships with network companies meet the conditions of Cal. Bus. & Prof. Code § 7451(a)-(d)—is consistent with the prior statement of the California Attorney General. The California Attorney General stated that Proposition 22 “establishe[d] different criteria for determining whether app-based transportation (rideshare) and delivery drivers are ‘employees’ or ‘independent contractors,’” and that “[i]ndependent contractors are not entitled to certain state-law protections afforded employees—including minimum wage, overtime, unemployment insurance, and workers’ compensation.”⁴ This position is also consistent with the decision in *Castellanos v. State of California*, 16 Cal.5th 588, 595 (Cal. 2024).

Despite Cal. Bus. & Prof. Code § 7451’s clear language regarding classification as independent contractors, app-based drivers continue to bring PAGA representative actions against network companies that meet the conditions of section 7451, wrongfully asserting purported claims of **employees** on behalf of the State under the California Labor Code.

³ See Joint Case Management Statement, *Uber Techs. Wage and Hour Cases*, San Francisco Superior Court Case No. CJC-21-005179 (Sept. 19, 2024) (“Plaintiffs have confirmed that they do not intend to pursue claims for work performed during the time while Proposition 22 is in effect as part of this coordinated proceeding, nor are they seeking injunctive relief given the result of *Castellanos [v. State of California]*, (2024) 16 Cal.5th 588 (upholding the constitutionality of Proposition 22)].”)

⁴ Changes Employment Classification Rules for App-Based Transportation and Delivery Drivers, Initiative Statute 19-0026 (Amdt. #1), January 2, 2020 (emphasis added); see also Attorney General’s Official Title and Summary of Proposition 22 (Proposition 22 “[c]lassifies drivers for app-based transportation (rideshare) and delivery companies as ‘independent contractors,’ not ‘employees. . . . Independent contractors are not covered by various state employment laws—including minimum wage, overtime, unemployment insurance, and workers’ compensation.”); Letter, Cal. Leg. Analysts Off (Dec. 18, 2019) (stating that should drivers work as independent contractors, not employees, companies would “not [be] required to follow state employment laws”).

Recommended Amendments to the Proposed Regulations

To alleviate the burden on network companies from unwarranted PAGA actions, I recommend and request that the following proposed section(s) of the regulations be amended (**additions in bold**) to state:

§ 17401 —“Claimant” means an individual who claims to be an aggrieved employee and has filed a PAGA notice. **A person who is an App-based Transportation or Delivery Driver under California Business and Professions Code section 7451(a)–(d) shall not be considered an “aggrieved employee” for PAGA purposes.**

The modification to the proposed definition allows for consistency with the language of Business and Profession Code 7451, which states in part that,

Notwithstanding any other provision of law, including, but not limited to, the Labor Code, the Unemployment Insurance Code, **and any orders, regulations, or opinions of the Department of Industrial Relations** or any board, division, or commission within the Department of Industrial Relations, an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver’s relationship with a network company if the following conditions are met.

Cal. Bus. & Prof. Code § 7451 (emphasis added). Additionally, I request modifications to Section 17420 as follows (**additions in bold**):

§ 17420(1)(E) — A short description of the claimant’s job duties or work performed by the claimant while employed with the employer. **If the work includes App-based transportation or delivery services, the notice shall include that fact.**

§ 17420(2)(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 work includes App-based transportation or delivery services, the statement shall include a factual explanation of whether or not the work met the requirements of Business and Professions Code section 7451(a)–(d).** 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.⁵


⁵ Separate and apart from implementing my suggested revisions to the regulations, I respectfully request that the LWDA’s “PAGA FAQ” page (<https://www.labor.ca.gov/resources/paga/paga-faqs/>) and the LWDA’s “Independent Contractor vs. Employee FAQ” page (<https://www.labor.ca.gov/employmentstatus/faq>) be revised to expressly state that claims involving relationships that meet the conditions of Cal. Bus. & Prof.

These modifications require a plaintiff to expressly allege facts supporting any claim that an app-based driver is not an independent contractor under Proposition 22, and is therefore eligible to pursue claims under the California Labor Code, including a PAGA claim.

* * *

Thank you for your attention to this important issue and for your continued commitment to effective and transparent rulemaking. I respectfully urge the LWDA to clarify this jurisdictional issue and would be pleased to discuss these matters further at your convenience.

Sincerely,


Scott Voelz

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Code § 7451 (or where drivers do not contest their classification as independent contractors) fall outside the LWDA's jurisdiction, and that of the Labor Code, and that PAGA representative actions cannot be brought on the State's behalf for drivers who are covered by Proposition 22.