From: Yoon Law Public Comment
To: West, Danielle@Labor
Subject: Proposed PAGA Rulemaking - COMMENT
Date: Friday, March 20, 2026 5:45:11 PM
Attachments: Comment Attachment.pdf

Dear Regulatory Officer,

I. Introduction

I am the principle of a law firm that represents primarily employees, including lawsuits involving PAGA. I submit this comment in response to the LWDA proposed amendments to the Private Attorneys General Act of 2004.

II. General Support / Opposition

I generally support the goals of this rulemaking. However, I respectfully urge the Agency to consider modifications to the sections as set for the below.

III. Specific Concerns

A. Merits and Neutrality

There are two terms that considered pejorative and are used in the proposed regulation.

§ 17415(a)(2) uses the term "**frivolous**" with respect to a frivolous violation of the Labor Code. The proposed regulation does not identify (such as by citation) which labor code sections it believes a violation of which is inherently frivolous. PAGA is a broad enforcement tool for virtually the entire labor code. If the LWDA wants to find certain portions of the Labor Code frivolous or that some violations of the Labor Code are frivolous violations, then it needs to describe what they are. This broad and vague labelling is outside of the scope of PAGA, which is an enhanced enforcement mechanism for the Labor Code, not a Labor Code section that is to identify other Labor Code sections as frivolous.

Another way to look at this comment is that the language in the proposed regulation is similar to the following statement: "there have been documented instances of some attorneys filing administrative complaints that are based on templates alleging frivolous violations of the Constitution." I don't think as a matter of principle, there can be a frivolous violation of a law or

constitution. There can be a frivolous lawsuit, a frivolous letter, but not a frivolous order or judgment. A violation means that someone (usually a judge) has determined that there was a law broken.

The Legislature passed each Labor Code section. If the LWDA believes certain sections of the Labor Code are frivolous, that seems outside an agency's power to state.

Further, the term frivolous is a term for the judiciary, not the executive branch. Specifically, Code of Civil Procedure § 128.7. The term frivolous is used in § 127.7 with refence to argument, as in frivolous arguments.

In the Labor Code, the term frivolous is referenced twice. It is used at Labor Code § 5813 with respect to workers' compensation referees or appeals boards making findings with respect to "tactics that are frivolous". It is used at Labor Code § 98.7 with respect to Labor Commissioner findings after a determination of no violation. The term is used with respect to "the complaint was frivolous".

Complaints and tactics are two noun examples in the Code that are associated with the use of the adjective frivolous. Included and incorporated into this comment is a response provided by Claude.ai in response to the question: "Can there be a frivolous violation of law?". Rather than attribute ai response to myself, I'll just include it because it says what I want to communicate quite well.

§ 17415(b)(2) vaguely defines a term "**vexatious filer**". The term has a definition given by the legislature and that term given by the legislature is extremely clear and limited.

CCP §391(b)(1) defines "vexatious litigant" as a person who does any of the following: (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing."

The statute requires final determination of loss or keeping the filing around without prosecuting.

The LWDA seeks to use this extremely pejorative and rarely applied label at its own discretion, which is definitionally before any dispute ever gets to the merits. PAGA does not contain a merit's based procedure such as provided in Labor Code § 98 et seq.

The proposed regulation also conflates filing a non-compliant notice with repeatedly losing on the merits or repeated abuse of process (which are the actions that do make someone a vexatious litigant according to the CCP). What the LWDA would do with this regulation is take a label that means someone is repeatedly losing on the merits or repeatedly abusing the legal process to someone who repeatedly files letters the LWDA deems insufficient.

A law firm that repeatedly amends its complaints in court is not vexatious just by the act of seeking repeat amendment. A law firm that amends its PAGA notices similarly does not mean the firm (or employee) is vexatious because vexatious means the litigant has to repeatedly lose on the merits or abuse process.

Rather than the term "vexatious filer" a neutral and not pejorative term is "repeat non-compliant filer". The LWDA should use a neutral term that accomplishes the same purpose rather than a pejorative term.

B. Settlement Guidelines Should be More Clear

§17461(c)(1). This regulation requires the LWDA be provided 45 days to review a proposed settlement. It appears drafted in a way not to overstep onto the judiciary's role in approval. However it provides no guidance as to what criteria the LWDA will apply during the 45 days, or whether the LWDA will do anything at all.

This regulation can provide the courts with guidance as to what the LWDA believes should be criteria for settlement approval. I have heard that the LWDA has objected to at least one PAGA settlement.

It would be great if the LWDA commented on every single PAGA settlement. I am sure every court would appreciate that. I also believe the LDWA does not have the ability or desire to look at every settlement. However, if the LWDA looks at a settlement, I suspect it has generated specific criteria it looks to determine whether to object. Providing this in the regulation will help the Courts and the litigants understand and avoid LWDA objections. Ideally, this would result in settlements that the LWDA believes are more consistent with its goals – without any need for affirmative action by the LWDA on a specific matter. Which would be a goal consistent with issuing regulations.

Public comment on those criteria would also allow them to be given more weight. I can suspect what the criteria could be looking at other sections of the proposed regulation, but having a list of specific criteria is much clearer.

If the LWDA is concerned that its failure to object could be interpreted as evidence of approval by the LWDA, then the LWDA should clear this up by posting a regulation either confirming or disaffirming such a conclusion.

C. 60 Day Deadline

I believe the Legislature passed PAGA to increase labor law enforcement and to permit employees to pursue claims for civil penalties when the LWDA declined to do so. Fundamentally, the process the legislature provided for this gave the LWDA a very specific amount of time. If no action was taken, then the employee could bring the PAGA lawsuit in court. I question how the proposed regulation appears to limit the ability of the employee to bring an action when the LWDA chooses not to bring its own action. The involvement of the LWDA is limited. There was originally just one: to determine whether to take action itself and thus preclude action the employee in court. After reform, a second issue was early resolution for small employers.

Other than generally, and I would urge the Agency to review the regulation and keep in mind that the role of the Agency is extremely limited, specifically at Section 17415(d)(3)(A)&(B). This regulation gives the LWDA more time than the statute permits. Labor Code §2699.3(a)(2)(A) gives a hard 60 day deadline to the LWDA. The legislature uses the term “shall”.

This proposed regulation gives the LWDA more time than the Legislature intended them to have.

D. High-Frequency Filer

"[A]any attorney or law firm that has filed 200 or more PAGA notices in the 12-month period" is a high-frequency filer. I think that one sole practitioner filing 199 notices in a rolling year is alot, and alot more concerning than a two-person law firm filing 200 letters. If the LWDA is going to draw a line, it has to be drawn somewhere. But 199 for one is not high frequency and 200 for two is high frequency is not the cleanest line. I understand that attaching the count to a name within a firm is problematic; for example, some firms have seriously high turnover. But firm names also change - how does the LWDA address firm name changes? I'm assuming the LWDA will have to start a registration system. I suspect once implemented, this will be an unfair system. Some lawyers will avoid it and other won't. And of course some lawyers who don't think they are covered will end up being counted as 200+ filers.

I believe these problems would be best avoided by instead of a relying on quantity, the LWDA focused on repeat non-compliant filers.

IV. Requested Action

I respectfully request that the Agency:

1. Delete the term “frivolous” from the proposed regulation.
2. Replace the term “vexatious” with “repeat non-compliant filer”
3. Remove the pre-filing screening order procedure and replace it with something that does not delay the timing of when the employee may bring their complaint in court.
4. Replace the high-frequency procedure with something else

V. Conclusion

Thank you for the opportunity to comment. I am happy to provide additional information or participate in any public hearing on this matter.

Respectfully submitted,

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