BLACKSTONE LAW

8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

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

Re: **Public Comment on Proposed Regulation No. 17415 and Related Provisions**
Regulatory Action File No. Z2026-0121-03

Dear Ms. West:

Blackstone Law, APC respectfully submits this comment on proposed section 17415 and related provisions. Our firm represents aggrieved employees in PAGA and wage-and-hour class actions across California. Blackstone Law was founded on a single conviction: that every worker in California deserves to be paid fully and treated fairly for the labor they perform. That conviction is why we do this work, and it is why we share the LWDA's commitment to a PAGA framework thatactually protects the people it was written to serve. In that regard, we share the LWDA's interest in discouraging unsupported filings and improving administrative efficiency. However, certain provisions of the proposed regulation are not well calibrated to those objectives and risk undermining the enforcement structure the Legislature created. This comment addresses three areas where the proposal would benefit from removal or revision: (1) the firm-level volume threshold and the "vexatious filer" designation; (2) the claimant personal certification requirement; and (3) the burden-of-proof allocation in cure-dispute hearings.

1. PROPOSED SECTION 17415 EXCEEDS ADMINISTRATIVE GAP-FILLING AND IMPROPERLY CREATES A QUASI-DISCIPLINARY REGIME USING A METRIC UNTETHERED TO THE CONDUCT THE LWDA PURPORTS TO TARGET

A. The Proposed Threshold Does Not Provide a Reasoned Connection Between the Regulatory Trigger and the Conduct at Issue

The proposed regulation uses annual firmwide notice volume as the basis for heightened scrutiny and additional obligations, even though that measure does not reasonably distinguish between legitimate enforcement activity and the conduct the LWDA seeks to address. Filing volume does not meaningfully indicate whether notices were adequately investigated, supported by the available facts, followed by litigation, resolved through representative relief, or found deficient. The LWDA's own materials indicate that firms with higher notice volumes often actively prosecute those representative claims (indeed, by way of example, in 2025, Blackstone Law filed complaints roughly 90% of the time

that it filed PAGA letters). A threshold that captures firms engaged in substantial legitimate enforcement activity because of its size (and thus its volume), while excluding lower-volume filers whose notices may raise the same concerns, is counterproductive, and does not reasonably track the conduct the LWDA has identified as its concern.

B. The Rule Regulates Firm Structure and Market Capacity Rather Than Attorney Misconduct

The 200-notice threshold regulation does not measure attorney behavior. It measures organizational scale. Two lawyers engaging in identical conduct will be treated differently depending on whether they practice inside a larger or smaller firm. That is not a rational way to identify abusive filing practices; it is a rule that (unconstitutionally) taxes size, specialization, and institutional capacity.

Publicly available data illustrates the defect. For example, Blackstone Law has approximately 47 attorneys and filed roughly 208 PAGA notices in 2025 - about 4.42 notices per attorney. Public data also reflects solo practitioners and very small firms filing at rates multiple times higher on a per-lawyer basis without triggering the heightened scrutiny. Paradoxically, the rule therefore only impacts firms that have assembled the staffing and capital necessary to investigate, litigate, and finance representative wage-and-hour matters against sophisticated employers.

This matters because employers defending PAGA actions are typically represented by well-resourced national defense firms with dedicated wage-and-hour groups, deep bench strength, and the financial capacity to litigate through trial and appeal. The ability of plaintiff-side counsel to match that capacity depends on size and scale. Larger plaintiff firms can retain experts, absorb protracted litigation costs, staff complex discovery, and resist pressure to accept inadequate settlements. Not all solo practitioners can deploy those resources and their clients may receive lower recoveries as a result. A rule that penalizes the existence of that size and scale predictably weakens the private-enforcement infrastructure on which PAGA depends.

The regulation thus penalizes the firms *least* likely to engage in the practice the ISOR identifies as problematic: quick individual settlements without representative enforcement. While Blackstone Law wholeheartedly agrees with the ISOR's identified concern that unsupported notices do not advance representative enforcement, the metric keyed to firmwide annual volume does not separate those practices from legitimate representative litigation. It instead privileges fragmentation over institutional competence and creates a competitive distortion untethered to notice adequacy. If the LWDA's objective is to ensure PAGA notices lead to genuine enforcement, the framework should encourage the aggregation of plaintiff-side talent into firms with the resources to see cases through, not discourage it. Alternatively, if the LWDA's concern is that individual attorneys are producing high volumes of template notices without adequate investigation, the appropriate units of analysis are: (1) filing volume of the individual attorney (not the firm); and (2) the frequency with which courts have adjudicated that attorney's notices were inadequate.

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C. The Proposed "Vexatious Filer" Regime Lacks Objective Standards, Conflicts with Governing Authority, and Invites Arbitrary and Collateral Misuse

Proposed section 17415 employs a stigmatizing state designation without objective predicates or neutral adjudicative safeguards. Terms such as "repeatedly" and "fail to allege adequately the facts and theories" do not identify what frequency, severity, or benchmark triggers designation, what comparator governs consistency, or how similar cases are to be treated alike. The proposal thus operates less as administrative housekeeping and more as a quasi-disciplinary regime created by regulation.

The defect is sharpened by governing law. In *Williams v. Superior Court* (2017) 3 Cal.5th 531, the Supreme Court made clear that nothing in Labor Code section 2699.3 requires a PAGA notice to satisfy some heightened factual threshold beyond the ordinary requirement of non-frivolousness. The Court likewise recognized the pre-discovery asymmetry inherent in these cases, where payroll, timekeeping, and policy information ordinarily resides with the employer. A regulation that authorizes state branding of counsel based on an LWDA view that a notice should have contained more detail than *Williams* permits cannot be reconciled with the statute as construed by the Supreme Court.

The downstream consequences are obvious and serious. Once the State creates an official label implying abusive filing conduct, defendants will invoke that label as leverage in settlement negotiations, adequacy challenges, discovery disputes, and collateral attacks on counsel's credibility. We are already aware of defense-side efforts to use the proposed regime rhetorically in private negotiations. That is predictable. The proposal manufactures a reputational cudgel that can be deployed apart from the merits of any underlying Labor Code claim.

Suggested revisions: If the LWDA retains any enhanced-review mechanism, rather than firmwide volume, it should tie adverse consequences to adjudicated conduct, such as repeated judicial findings of frivolousness, sanctions, or express court determinations that a notice was materially deficient under governing law. At minimum, any such regime should use objective standards, provide notice and an opportunity to cure, and require determination by a neutral decisionmaker rather than LWDA discretion untethered to judicial findings.

2. THE CLAIMANT PERSONAL CERTIFICATION REQUIREMENT ASKS WORKERS TO ATTEST TO LEGAL CONCLUSIONS THEY ARE NOT POSITIONED TO EVALUATE

Proposed section 17415(c)(1)(B) requires each claimant whose notice is filed by a "high-frequency filer" to personally certify that the violations alleged "accurately describe the violations I believe I personally suffered." The ISOR explains this requirement by reference to instances where employees at cure conferences contradicted violations alleged on their behalf.[1] That concern is understandable. However, the proposed certification does not address this concern effectively because it asks employees to perform a function that the nature of wage-and-hour law makes them unable to perform.

[1] ISOR, p. 20.

A. The Most Common PAGA Violations Are Not Necessarily Observable by Employees

The certification requires the claimant to attest that the alleged violations "accurately describe" something they "personally suffered." For many of the most common PAGA claims, whether a violation occurred is a *legal* determination that depends on analysis the employee has no ability to conduct. For example:

Regular rate of pay. A violation of section 510 based on incorrect overtime calculations requires identifying all forms of non-discretionary compensation (i.e., production bonuses, shift differentials, piece-rate premiums) and integrating them into the regular rate.[2] An employee may know whether they worked overtime. However, they are unlikely to know whether a quarterly bonus was improperly excluded from the rate calculation. The violation exists in payroll mathematics the employee has never seen and could not evaluate and depends on a legal analysis of whether the bonus was discretionary,

Meal period violations. A violation of section 226.7 may turn on whether the employer's time-rounding system systematically shorted employees for wages to which they were legally entitled,[3] or whether auto-deduction practices created a rebuttable presumption of non-compliance, neither of which may be fully apparent to or understood by an employee. Whether the employee subjectively felt they received enough of a lunch break some of the time is irrelevant in assessing a section 226.7 violation.

Wage statement violations. A section 226 violation may involve the employer's failure to include the correct legal entity name, the omission of sick-pay accrual rates, or the use of codes that do not satisfy the "readily understandable" standard.[4] These are legal deficiencies that most employees will not recognize as violations even when looking at their own wage statement. The certification asks the employee to attest to their attorney's legal analysis, which is the reason they retained counsel in the first place.

Derivative violations. Waiting-time penalties under section 203 and additional wage-statement claims are often derivative of underlying substantive violations and, to trigger a PAGA penalty, such derivative violations must be "willful, intentional or knowing." If the employee cannot meaningfully evaluate some of the underlying legal claims, they also would not necessarily know whether or to what extent these derivative violations occurred. Nor are they likely to have any basis for certifying whether the employer's conduct is legally violative or "willful, intentional or knowing" as defined by California law. The certification requirement thus compounds across the notice.

B. The Certification Creates an Asymmetric Burden and a Litigation Vulnerability

The disparity between what is required of claimants and employers under the proposed regulations is significant. An employer may, but need not, respond to a PAGA notice. (§ 17421(a).) An employer's cure proposal is a confidential settlement communication. (§ 17430(e).) An employer's cure-

[2] *Alvarado v. Dart Container Corp.* (2018) 4 Cal.5th 542.

[3] See IWC Wage Order No. 4-2001, § 11; *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

[4] Lab. Code § 226, subd. (a)(1)–(9).

completion notice requires a sworn statement from a company representative with access to payroll systems, personnel files, and legal counsel. (§ 17435(a).) The claimant, by contrast, must personally certify the legal accuracy of complex legal claims based only on their memory of their work experience.

This asymmetry has litigation consequences. Once a claimant has signed a certification attesting to violations they "personally suffered," the certification becomes a target in discovery and depositions. A claimant who cannot explain the mechanics of a regular-rate violation, which virtually no lay employee can, will be characterized as unable to support the very claims they certified. The certification defeats the underlying purposeof PAGA – protecting employees – by converting the employee's understandable lack of legal expertise into an affirmative and unjustifiable vulnerability.

C. The Existing Attorney Certification Already Serves the LWDA's Purpose

Proposed section 17420(e) already requires every PAGA notice to include a section 128.7-style certification by the claimant or their attorney: that the claims have legal and evidentiary support and are not presented for an improper purpose.[5] This places the professional obligation where it belongs: on the attorney who has the training to evaluate whether a regular-rate claim is supported or whether a wage-statement deficiency constitutes a section 226 violation. It applies uniformly to all filers. If the LWDA's concern is that some attorneys file notices without consulting their clients, the appropriate remedy is to enforce the existing attorney certification more rigorously, not to shift the evaluative burden onto the client.

Suggested revision: Withdraw the claimant certification in section 17415(c)(1)(B). If the LWDA wishes to ensure that claimants have been consulted, it could require an attorney certification that the claimant has reviewed the notice and authorized its filing, without requiring attestation to the legal accuracy of complex wage-and-hour claims the claimant is not positioned to evaluate.

3. THE BURDEN-OF-PROOF ALLOCATION IN CURE-DISPUTE HEARINGS SHOULD BE REVISED TO REFLECT THE INFORMATION ASYMMETRIES

Section 17439(c) places the burden of proof on the claimant to demonstrate that the LWDA's preliminary cure determination was incorrect. Section 17439(e) simultaneously provides that there is no right to prehearing discovery or motions. The central question at the hearing is whether the employer completed the measures prescribed in theLWDA's cure plan. The employer possesses the records necessary to answer that question (i.e., payroll data, timekeeping records, revised policies, and evidence of payments). The claimant does not, and the regulations provide no mechanism to obtain them in advance of the hearing.

The ISOR acknowledges this dynamic. In discussing pre-conference statements, the LWDA recognizes the "information asymmetry often applicable at this stage of proceedings where the employee has not had an opportunity to conduct litigation discovery and may not have access to information possessed

[5] *Williams v. Superior Court* (2017) 3 Cal.5th 531, 545, citing Code Civ. Proc., § 128.7.

by the employer."[6] Yet the regulations do not address this acknowledged asymmetry at the hearing stage.

The regulations themselves adopt a different allocation at the preliminary-determination stage: section 17436(a) provides that "the employer has the burden of proof with respect to demonstrating an alleged violation has been cured." There is no evident reason to shift that burden when the claimant requests a hearing. The question - whether the employer completed the cure - does not change. The party best positioned to answer it, and the party possessing the relevant records, remains the employer. Placing the burden on the claimant in a proceeding where discovery is prohibited and the relevant evidence is in the opposing party's exclusive possession unfairly prejudices employees.

Suggested revision: Amend section 17439(c) to place the burden on the employer, consistent with section 17436(a). In the alternative, if the current allocation is retained, amend section 17439(e) to provide claimants with prehearing access to the records the employer submitted to the LWDA in support of its cure-completion notice and the right to discovery.

CONCLUSION

The LWDA's stated objectives of improving notice quality, discouraging unsupported filings and facilitating efficient administrative review, are objectives we share and hope to help champion among the plaintiffs' bar. However, the proposed regulations are not only ineffective in remedying those issues,but they would actually have the opposite effect. Proposed section 17415 creates a quasi-disciplinary classification based on a firmwide metric that does not meaningfully track unsupported notice practices and that penalizes organizational size rather than misconduct. It thereby threatens to shrink the plaintiff-side infrastructure needed to enforce the Labor Code against sophisticated employers. The claimant-certification provision separately asks workers to attest to legal conclusions they are often not positioned to evaluate, while the cure-hearing burden allocation requires claimants to disprove the adequacy of an employer's cure without access to employer-held information. Taken together, these provisions reduce private enforcement without supplying any substitute public enforcement capacity.

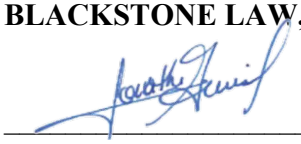
We respectfully urge the LWDA to withdraw or materially revise these provisions. Any regime aimed at abusive notice practices should be anchored to objective, adjudicated misconduct—not firm size, not raw annual volume, and not undefined LWDA assessments of what more a pre-discovery notice should have said. The claimant certification should be withdrawn in favor of the existing section 128.7-style certification, and the cure-hearing burden should be aligned with the employer-bears-the-burden structure already reflected elsewhere in the regulations. Regulations that deter serious plaintiff-side enforcement while leaving the underlying violations unremedied do not improve PAGA administration; they undermine it. We welcome the opportunity to work constructively toward

[6] ISOR, p. 39.

regulations that advance the LWDA's objectives without weakening the enforcement structure the statute was enacted to preserve.

Respectfully submitted,

BLACKSTONE LAW, APC



Jonathan M. Genish, Esq.