March 23, 2026

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

RE: Subject: Proposed Regulatory Action to Adopt New Sections - Chapter 9. Labor Code Private Attorneys General Act of 2004 (PAGA)

Dear California Labor and Workforce Development Agency,

The California Restaurant Association (CRA) is the definitive voice of the state's food service industry, representing the nearly 22,000 eating establishments that employ individuals, serve guests, and are critical contributors to local economies.

We have provided written comments throughout PAGA's legislative history, including during the historic 2024 PAGA reforms, and we appreciate the current regulatory effort and opportunity to comment further. We also align with the comments provided in the California Chamber of Commerce's coalition letter and are taking this opportunity to amplify those concerns specific to the restaurant community and share them with the California Labor and Workforce Development Agency (LWDA or Agency).

Recommendation 1: Require PAGA notice certifications, under penalty of perjury, from both attorney's labelled "high-frequency" and their clients.

The proposed regulations require a high-frequency filer to include a cover letter with each PAGA notice that states that the attorney or law firm is a high-frequency filer. In addition, the cover letter must be signed by the claimant wherein the employee certifies that the alleged violations (1) accurately describe the violations the employee believes they personally suffered, and (2) are not presented for an improper purpose, such as to harass or annoy the employer or employers named in the PAGA notice. Additionally, requiring claimant representatives to certify the contents of their notices under penalty of perjury will encourage compliance with PAGA's notice provisions and impose material consequences for filing inaccurate information.

Recommendation 2: Strike Section 17415(b)(1)(B) and allow section 501(c)(3) non-profit legal aid organizations to be labelled as high-frequency filers.

The current regulations would exclude nonprofit legal aid organizations from the "high-frequency filer" definition. Given the rampant abuse that has been experienced by the employer community and acknowledged by LWDA, the CRA contends that all attorneys need to be held to the same standard and requests that LWDA strike Section 17415(b)(1)(B).

Recommendation 3: LWDA should allow the"vexatious filer" designation to be applied to law firms as well.

The proposed regulations define a "vexatious filer" as any person or attorney who has repeatedly filed PAGA notices that do not comply with legal requirements, such as not adequately alleging facts to support alleged violations or where the alleged violations are frivolous or appear intended to harass. The proposed regulations provide that the LWDA's investigation of an alleged PAGA claim shall not commence unless and until a conditionally filed PAGA notice has been screened and accepted for filing by the LWDA.

Allowing the definition of "vexatious filer" to be applied to law firms, in addition to individuals, will avoid creating a loophole where a law firm representing a client can simply have a different attorney file on behalf of the firm's client to avoid the prefiling screening order.

Recommendation 4: The regulations should determine a clear process for how individuals, attorneys, or law firms are determined to be "vexatious filers" and allow for people who could be such filers to be reported to LWDA.

The proposed regulations do not currently establish a process by which LWDA would identify attorneys or firms that are "vexatious filers." It is critical for the LWDA to create a clear mechanism for identifying vexatious filers, including audits. Additional additive value would come from a system that allows claimant employees, respondent employers, and attorneys to report individuals, attorneys, or firms whom they believe to be "vexatious filers," based on their direct experience.

As part of its review process, if the Agency identifies a PAGA notice that fails to comply with the requirements of Labor Code Section 2699.3 and Sections 17420 and 17450 of the Proposed Regulations, that notice ought to be rejected by the Agency and deemed withdrawn, such that it cannot be relied upon to satisfy the administrative prerequisites to filing a civil PAGA action.

Recommendation 5: A claimant's failure to comply with Labor Code Section 2699.3 and Sections 17420(d) and 17450(c) of the proposed regulations or any other regulatory requirements imposed on a high-frequency filer should be a basis for a respondent employer to ask a court to dismiss a PAGA action by motion or application, including at the pleadings stage.

As LWDA has recognized, "…there have been documented instances of some attorneys filing PAGA notices that are based on templates alleging frivolous, conclusory, or boilerplate violations of the Labor Code…In many circumstances, attorneys engaged in such practices do not report filing PAGA lawsuits, thus demonstrating an apparent strategy of using PAGA notices as a bargaining chip in seeking quick individual settlements and attorneys' fees recoveries without representing or seeking to protect the interests of the state or other aggrieved employees. Accordingly, the Agency has determined certain safeguards are necessary to prevent such abusive practices."

For PAGA notices filed in the usual course, there is no mechanism for enforcement provided in Sections 17420 and 17450, and there is no enforcement mechanism for the required additional steps for high-frequency filers. Even in the case of a designated vexatious filer, the regulations provide that "[i]f the Agency does not provide [] notice [regarding whether the proposed PAGA notice complies with applicable statutory and regulatory requirements] within 30 days of submission of the proposed notice, the PAGA notice will be deemed accepted for filing."(§ 17415, subd. (d)(3)(C).)

We understand LWDA may lack the resources to review every PAGA notice and proposed PAGA notice. If this is the case, then the regulations should specifically authorize a respondent employer to assert a defense that the PAGA notice is inadequate and fails to satisfy statutory and regulatory requirements, and such a defense should be a basis for a respondent employer to ask a court to dismiss a PAGA action at the pleadings stage.

Recommendation 6: We recommend that the Agency monitor high-frequency filers to ensure they are not referring cases to evade the high-frequency filer label.

Due to the very long history of abuses, the Agency should develop a process by which it monitors attorney and law firm behavior to ensure that "high-frequency filers" are not simply referring out cases to avoid hitting the 200 PAGA notice threshold. Something needs to be done to ensure that these firms don't simply send cases to other firms in exchange for a referral fee to avoid the label, making the proposed high-frequency filer label easily avoidable.

Recommendation 7: All law firms that represent a PAGA plaintiff in a civil action should be required to certify the content of the underlying PAGA notice.

Often, PAGA actions are filed by multiple firms (sometimes three, or four, or more) that team up together as co-counsel for the plaintiff(s), often with only one firm filing the underlying PAGA notice. Permitting law firms to jointly represent a PAGA plaintiff in litigation, even though only one law firm filed the underlying PAGA notice, undermines the purposes of PAGA and enables certain attorneys and firms to evade designation as "high-frequency filers," simply by divvying up the PAGA notice filing responsibilities among themselves.

In order to avoid this, the regulations should require all law firms representing a PAGA plaintiff in a civil action to sign onto and endorse the content of the underlying PAGA notice. This certification should be done (1) when the PAGA notice is initially filed, (2) by amendment made before a PAGA civil action is commenced, or (3) by amendment within 30 days after a new law firm associates or substitutes as counsel in the PAGA civil action.

Recommendation 8: The Agency Should Allow for More Time to Correct Wage Statement Cures.

Section 17442(b) provides that if the Agency determines that an employer's wage statement cure is insufficient, then the employer only has three business days to correct the problem. Three business days is an insufficient amount of time, especially if the cure proposal involves re-issuing three years of wage statements to potentially hundreds of employees. The Agency should either increase that period of time or provide flexibility for the Agency to determine on a case-by-case basis what amount of time is sufficient,

taking into account the number of employees and the employer's good faith in attempting to cure the alleged violation.

Recommendation 9: The Proposed Regulations Should Provide Deference to DOSH Regarding Alleged Violations of Division 5.

The following three revisions to the Proposed Regulations regarding PAGA claims alleging violations of Division 5 are essential. First, the Agency should require the claimant to identify the specific Labor Code sections or agency regulations that provide civil penalties for the alleged violations. Second, clarification is needed to ensure that if a claimant's PAGA notice fails to provide DOSH with the information needed for it to initiate an inspection or investigation, the claimant cannot file or maintain a PAGA civil action alleging safety and health violations under Division 5. Lastly, when DOSH investigates or inspects an alleged violation and declines to issue a citation, no claimant should be allowed to file a PAGA civil action based on the same alleged violation.

Recommendation 11: If DOSH cannot initiate an investigation due to inadequate information provided by the claimant, the claimant should not be permitted to file or maintain a PAGA action, and the claimant's failure should be determinable by either the Division or the court.

The proposed regulations provide important guidance to claimants who seek to bring PAGA actions alleging violations of Division 5. In too many cases, the PAGA notices in such matters fail to provide enough information and specificity to enable DOSH to begin an investigation as Labor Code Section 2699.3(b)(2)(A) requires. We appreciate that the proposed regulations represent a positive step forward in providing the Agency and its divisions, as well as employers, with a better understanding of the specific safety and health violations a purported PAGA plaintiff seeks to assert.

We also believe that the proposed regulations should make it clear that the time for DOSH to conduct an investigation does not start to run until the alleged aggrieved employee provides sufficient information for DOSH to appropriately begin an investigation. Beyond that, if either the Agency or the court determines a claimant's notice to DOSH is deficient, the claimant should not be permitted to pursue or maintain a PAGA action alleging safety and health violations under Division 5.

Recommendation 12: If DOSH commences an investigation under Labor Code Section 2699.3(b)(2) in response to a notice submitted pursuant to Labor Code Section 2699.3 (b)(1) and regulation 17450 or 17450.5, no claimant may initiate an action pursuant to Labor Code section 2699 based on the same alleged violations.

By enacting the specific notice requirements in Labor Code Section 2699.3 (b), the Legislature recognized that DOSH has specialized knowledge and expertise. PAGA claimants should not be permitted to second-guess DOSH's enforcement determinations and substitute their own judgment for DOSH's on technical workplace safety issues. Where DOSH investigates and does not issue a citation, the statute is not clear about what happens if it does not issue a citation because it determined no violation had occurred. Clarification here is warranted to address situations where DOSH investigates, determines that no citation is warranted because the employer is in compliance with the law, and yet a plaintiff's counsel contends that the PAGA case should proceed.

Recommendation 13: The Proposed Regulations Should Promote Fair, Fast, and Final Resolution to Claims, Which Includes Amending Claims for Settlement Purposes

We are concerned that some of the proposed regulations related to settlements will encourage an increased volume of actions against the same employers, allow for abuse of PAGA, and prevent parties from reaching appropriate resolutions of PAGA claims.

Recommendation 14: Amending PAGA Notices In Connection with a Settlement Should be Permitted

A blanket prohibition on amending PAGA notices in connection with a PAGA settlement in Sections 17420.5(d) and 17450.5(c) is concerning. These proposed provisions 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." In the settlement process, PAGA notices are frequently amended to reflect new information about alleged violations revealed during the discovery process and to reflect all known alleged violations. This proposed language would potentially prevent that and limit settlement agreements only to the initial PAGA notice. To address this concern, the

LWDA should require any amended complaint to include a short statement justifying the amendment.

Recommendation 15: Remove Section17461(b) & Relevant Language.

This section imposes a new requirement never contemplated by the statutory text of PAGA and undermines the California Supreme Court's decision in *Turrieta v. Lyft*, which held that notice to other employees was not required under PAGA and noted differences between PAGA and class actions, where that is a requirement.

Recommendation 16: Courts Should Determine When to Set Settlement Hearings

Here, the Agency is effectively imposing a mandatory stay on court proceedings and preventing a court from setting its own docket by having the 45-day review timeframe be a requisite for the settlement approval process being agreed to by the parties. While the submission of proposed settlement documents to LWDA does have value, concern arises about the Agency potentially using the parties as a means to delay a court's handling of a case.

OSHA-Related PAGA Claims

Existing law contains certain procedural requirements that must be met before a PAGA claim related to alleged workplace safety and health violations may be filed. This process requires a plaintiff to file a notice with Cal-OSHA alleging a violation of workplace safety and health laws, who then has an opportunity to investigate and issue a citation. The proposed regulations provide additional details regarding this process. Among other things, the regulations provide that if Cal-OSHA does not issue a citation within applicable deadlines because Cal-OSHA has not commenced an inspection or investigation, the employee may commence filing their PAGA civil action.

The regulations do not specifically address the potential situation in which, after a PAGA action has been filed, Cal-OSHA commences an inspection or investigation, such as after receiving new information or while investigating an alleged ongoing violation. The proposed regulations are unclear whether the PAGA civil action will be halted if Cal-OSHA is investigating an allegation after the PAGA claim has already been filed in court.

The CRA recognizes that the proposed regulations are generally positive and appreciates the work of LWDA to curb the rampant abuse of PAGA by attorneys who do not have the best interest of claimant employees, the state, or employers in mind. Moreover, we appreciate the time of LWDA and the opportunity to comment on the proposed regulations.

Thank you,

Matt Sutton

Senior Vice President, Government Affairs & Public Policy

California Restaurant Association