March 23, 2026

California Labor and Workforce Development Agency
1416 9th Street
Sacramento, CA 95814

VIA Email - Danielle.West@labor.ca.gov.

Re: Proposed Rulemaking – Labor Code Private Attorneys General Act of 2004 (PAGA)

Dear Secretary Knox:

On behalf of the members of the California Retailers Association (CRA), we appreciate the opportunity to comment on the Agency's proposed regulations implementing the Private Attorneys General Act (PAGA). Together, CRA represents one of the largest and most diverse sectors of California's economy, including general merchandise, grocery, apparel, and e-commerce. CRA, and its members, bring a unique perspective on how PAGA affects employers both large and small, as their combined membership includes retailers from mom-and-pop stores to the largest national retailers.

CRA was proud to play a leading role in the coalition that worked collaboratively with the Administration, legislative leaders, and other stakeholders to develop the 2024 PAGA reform compromise signed by Governor Newsom. That effort reflected a thoughtful and hard-fought balance - preserving meaningful worker protections while addressing longstanding concerns about abuse, inefficiency, and the growing disconnect between PAGA's intent and its real-world application.

CRA and our members are deeply invested in ensuring that implementation of these reforms reflects both the letter and the spirit of that agreement. The regulatory phase is where that balance is either realized or unintentionally undermined. We offer these comments in that spirit: supporting the Administration's leadership and the Governor's commitment to meaningful reform, while ensuring the final framework delivers on the shared goal of a more transparent, accountable, and functional PAGA system.

Retail is California's largest private-sector employer and a cornerstone of the state's economy. Our members operate in every community across the state and are deeply committed to compliance with California's labor laws. At the same time, they have experienced firsthand the operational and financial strain caused by the current PAGA framework, particularly the proliferation of duplicative, boilerplate claims that do little to advance worker protections while significantly increasing litigation costs.
We commend the LWDA for taking meaningful steps to address these challenges. The data cited by the Agency underscores the need for reform: a small number of law firms and attorneys account for a disproportionate share of filings, often relying on templated allegations that hinder meaningful review and resolution. The proposed regulations represent an important step toward restoring balance and improving the integrity of the PAGA system.

At the same time, to fully realize the intent of both the original PAGA statute and the 2024 reforms, we respectfully offer the following recommendations.

I. PRESERVING THE ABILITY TO ACHIEVE GLOBAL RESOLUTION

The proposed prohibition on amending PAGA notices after settlement (Section 17420.5(d)), combined with the prohibition on pre-litigation releases (Section 17462), fundamentally undermines the ability of parties to resolve disputes efficiently and comprehensively.

From the retail industry's perspective, this is one of the most consequential aspects of the proposed rulemaking.

As the Agency recognized in its notice of proposed rulemaking, PAGA notices are often boilerplate, lacking sufficient information for the employer to identify the bases for the alleged violations alleged. In our members' experience, a PAGA plaintiff's claims often evolve after they file their PAGA notice, including during settlement discussions and even at mediation. Prohibiting amendments to PAGA notices in connection with settlements would obstruct parties from resolving all disputed claims between them.

This would significantly prejudice employers, by encouraging abuse of PAGA claims and inhibiting employers' ability to attain closure in PAGA settlements. This would also prejudice employees, because the settlement value of an action is significantly diminished if the threat of a follow-on PAGA action, potentially filed by the same law firm and same PAGA plaintiff who just settled, looms on the horizon. This outcome is inconsistent with the goals of the 2024 reforms, which were intended to promote early resolution, efficiency, and certainty.

Recommendations:

- Allow amendments to PAGA notices as part of settlement, where the PAGA plaintiff explains the reasons for the amendments and otherwise satisfies statutory and regulatory notice requirements
- Strike Section 17462, or at minimum permit pre-litigation global settlements, provided that the PAGA claimant initiates a civil action and satisfies statutory and regulatory requirements for obtaining settlement approval

Absent these changes, the regulations will incentivize prolonged litigation rather than resolution.

II. AVOIDING UNNECESSARY COMPLEXITY IN THE SETTLEMENT PROCESS

The proposed requirement to notify other employees with pending PAGA actions, and allow third-party comments, introduces significant risk of delay, cost escalation, and strategic interference.

Particularly for multi-location retail employers, this could result in:

- Competing claims and objections from other plaintiffs' firms
- Delays in settlement approval
- Increased litigation costs without corresponding benefits to workers

While transparency is important, the proposed structure risks transforming the settlement process into a forum for litigation competition rather than resolution. Further, this proposed requirement, coupled with the proposed prohibition on amending PAGA notices as part of a settlement, will encourage the abusive "top filing" the Agency seeks to limit, and incentivize plaintiff's firms to take unreasonable settlement positions, even when the substantive claims lack merit. Typically, the firms that engage in "top filing" and PAGA litigation warfare against employers are the same firms that merit designation as "high frequency" and "vexatious" filers.

Recommendations:

- Clarify that a pending PAGA action, for purposes of Section 17461, only includes pending civil actions, and not open PAGA notices for which a PAGA action has not been filed
- Clarify that notices required under Section 17461 are not required for dismissals of PAGA actions
- Clarify that third-party comments are advisory only
- Confirm that such comments do not create intervention rights or grounds to delay settlement
- Limit LWDA review to clear procedural or substantive deficiencies
- Provide that the Agency will consider an attorney's status as a "high frequency" or "vexatious" filer in assessing the weight, if any, to afford a third-party comment

III. STRENGTHENING NOTICE REQUIREMENTS

CRA and our members strongly support efforts to improve the specificity of PAGA notices. We recommend that additional steps be taken to ensure meaningful investigation and compliance.

Without sufficient detail, employers cannot:

- Identify the scope of alleged violations
- Conduct targeted investigations
- Implement timely corrective actions

Recommendations:

- Require that PAGA notices include:
- A description of the group(s) of employees represented (job titles, departments, shifts)
- The locations or facilities where violations occurred
- An estimate of the number of affected employees, or the basis for that estimate

Improved notice specificity is essential to achieving the reforms' goal of early resolution and compliance.

IV. ENSURING CLAIMANT ACCOUNTABILITY

The proposed rules introduce certification requirements for high-frequency filers, but do not apply equivalent standards to all claimants.

This creates an uneven system where accountability depends on filing volume rather than the merits of the claim.

Recommendations:

- Require all claimants to certify, under penalty of perjury, that:
- They personally experienced the alleged violations
- The claims have evidentiary support
- The filing is not for an improper purpose

This requirement would significantly improve the credibility and integrity of the PAGA process.

V. LOWERING THE HIGH-FREQUENCY FILER THRESHOLD

The current threshold of 200 filings per year is too high to effectively capture patterns of high-volume filing behavior.

Recommendation:

- Lower the threshold (e.g., to 75 filings annually) to ensure meaningful oversight

VI. IDENTIFYING VEXATIOUS FILERS

The regulations should set forth a clear framework for determining "vexatious filer" status. Also, certain law firms have a pattern and practice of repeatedly filing PAGA notices that do not comply with legal requirements. The boilerplate notices the Agency has criticized are often based on templates used across an entire firm. Law firms should be able to receive a "vexatious filer" designation.

Recommendations:

- Amend the definition of "vexatious filer" to include law firms, in addition to persons and attorneys
- Create a clear procedure for the Agency to audit PAGA notices to determine whether a person, entity, or law firm is a "vexatious filer"
- Provide a mechanism for affected persons, entities, attorneys, or law firms to report to the Agency any persons, attorneys, or law firms that repeatedly file PAGA notices that fail to comply with legal requirements

VII. ADDRESSING DUPLICATIVE AND DEFICIENT FILINGS

Retail employers frequently face multiple overlapping PAGA notices covering the same allegations, time periods, and employee populations.

The proposed regulations do not provide a mechanism for the Agency to reject such filings.

Recommendations:

- Require the LWDA to review PAGA notices for facial sufficiency and duplicativeness
- Reject duplicative filings covering the same employer, time period, and employee group
- Allow summary rejection of deficient notices without tolling

These provisions would reduce unnecessary administrative burden on employers, the Agency, and the courts.

VIII. DETERRING FRIVOLOUS CLAIMS

The proposed regulations should include meaningful deterrents for meritless or unsupported filings. Recommendations:

Provide that a PAGA plaintiff's failure to comply with statutory and regulatory notice requirements is a ground for an employer to seek dismissal of a PAGA action, including by way of a pleadings challenge Establish sanctions for claims determined to be frivolous or unsupported following Agency or court review

Without enforcement mechanisms, the incentives that drive abusive filings will remain unchanged.

IX. DIVISION 5 CLAIMS

PAGA claimants who seek PAGA penalties for alleged safety and health violations under Division 5 often fail to provide sufficient information for the Department of Occupational Safety and Health (Cal/OSHA) to commence the inspection or investigation required under Labor Code section 2699.3(b)(2).

Recommendation:

- Provide that if Cal/OSHA does not commence an inspection or investigation because a PAGA notice fails to meet statutory and regulatory notice requirements, a PAGA claimant cannot file or maintain a PAGA action

X. CLARIFYING AMENDMENTS AND LIMITATIONS PERIODS

The regulations should clearly address the legal implications of amended PAGA notices.

Recommendation:

- Specify that newly added claims do not relate back to the original filing date unless expressly agreed by the employer

This clarification is essential to maintaining fairness and predictability.

XI. ADDITIONAL STRUCTURAL REGULATIONS

To further align the regulations with the goals of the 2024 reform:

- Limit penalty stacking (one penalty per pay period per violation type)
- Clarify that derivative penalties cannot be stacked on underlying violations
- Require claimant verification for all notices

These changes will ensure penalties remain proportionate and tied to actual violations.

The proposed regulations represent a meaningful and constructive step forward. We appreciate the Agency's efforts, and the Administration's leadership, in addressing long-standing concerns with the PAGA system.

CRA, as a coalition partner in the 2024 reform effort, is committed to ensuring that implementation delivers on the shared vision established by the Governor and Legislature: a system that protects workers, promotes compliance, and discourages abuse.

California can lead in creating a PAGA framework that reflects both strong worker protection and a fair, predictable, and functional business environment. We look forward to continuing to work with the Agency to achieve that outcome.

Sincerely,

Rachel Michelin
President & CEO
California Retailers Association

Cc: Office of California Gavin Newsom