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Submitted via email: Danielle.West@labor.ca.gov

Re: 2026 California Labor and Workforce Development Agency (LWDA) Proposed Rulemaking for the California Private Attorneys General Act (PAGA)

California Labor and Workforce Development Agency:

LeadingAge California appreciates the opportunity to provide stakeholder feedback surrounding the proposed Private Attorneys General Act (PAGA) regulations.

LeadingAge California is the state's leading advocate for mission-driven housing, care, and services for older adults. Our over eight hundred members across the state include providers of affordable senior housing, residential care facilities for the elderly (assisted living), life plan communities, skilled nursing care, home and community-based services, home health, and hospice care. Our members vary in size, from small single-site communities to large multi-site organizations. However, all members care for some of the most vulnerable members of our population.

Our members treat their employees with respect, pay them in accordance with the law and diligently strive to follow all California employment related laws, including wage and hour laws. Our members have experienced first-hand the devastating financial and operational impact of the PAGA. We applaud the Agency's recognition that PAGA has produced "protracted and costly litigation that has led to criticism of the Act." [1] We supported the 2024 PAGA reforms standing requirements that the Agency acknowledges "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." *Id.*

The 2024 reforms and the 2026 proposed regulations are steps in the right direction to resolve the problems and abuses that the Agency recognized in 2024. However, as reflected in our comments, more can and needs to be done. We provide these comments in the hope that the Agency will revise its proposed regulations to reflect the continued concerns our members raise that the proposed regulations do not meet. We believe these further changes are consistent with the Agency's acknowledgement that "experience has shown a propensity by some attorneys to exploit the minimal notice requirements described by courts before the 2024 legislative reforms, resulting in conduct detrimental to the proper functioning of the law.[2]

[1] (February 6, 2026, ISOR IN SUPPORT OF LWDA PROPOSED REGULATIONS, p. 4) (hereinafter "ISOR at___")
[2] The ISOR cites to the following: (See Williams, supra, 110 Cal.App.5th at pp. 943-944 ["When our Legislature recently amended PAGA, it did so in response to the observation that PAGA's goal of "bolster[ing] labor law enforcement" had been "manipulated over its 20-year history by certain trial attorneys as a money-making scheme"], citing Assem. Floor Analysis, Assembly Bill 2288 (2024) June 27, 2024, p. 5.)" *See*, ISOR, p. 5.

1. *§ 17415. High-Frequency and Vexatious Filers; Additional Notice Requirements and Prefiling Screening Orders.*

The additional certification requirements in the new category of "high-frequency filers" should apply to every filer. If not, the regulations will not achieve the Agency's reason for proposing § 17415, which it articulated to be the following:

(a)(1) The protection of workers' rights is a fundamental public policy of this state. PAGA provides a unique and effective tool for enforcing labor laws and both encouraging compliance with and deterring violations of the Labor Code.

(2) Notwithstanding this important public policy, at the time of adoption of this regulation, 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. (See, Proposed Text: § 17415. at p. 34)

By not applying the "high-frequency filer" requirement of including an employee's certification that they have reviewed the PAGA notice and certify that they have suffered the violations contained therein, members who are sued by non-high frequency filers will continue to receive PAGA notices that the employees may have never seen or even authorized. Currently, the proposed regulations state that in the non-frequently filer setting, the notice must be "by the claimant or *claimant's representative*." (See § 17420 (e))

Addressing unauthorized filings is vital to protect both employees and employers. Permitting attorneys to file claims their alleged "clients" have not even seen, benefits no one except attorneys seeking to abuse PAGA for monetary gain. Attorneys for PAGA claimants routinely state that they have cases, not clients. It is a frequent occurrence for cases to be filed by attorneys in the name of one employee, only to lose that claimant because they lack standing or decide to withdraw from the case. This phenomenon occurs because the attorney is driving the claims, rather than the claimant. When it happens, the claimant's attorneys simply use the discovery process to market to other employees until they find a replacement and substitute them into the case.

Similar misconduct has been documented in an analogous legal area—Workers' Compensation—where attorneys acting on behalf of employees manipulate the legal system for profit without the employees' knowledge or authorization. In *Fitchie v. Abramson Labor Group*, Los Angeles County Case No. 26STCV03102, the plaintiff alleges she contacted Abramson Labor Group related to concerns about her employer's wage and hour practices. She alleges that despite experiencing no injury at work—and telling the law firm she had not been injured—her attorneys both issued a civil demand and filed a workers' compensation claim alleging injuries that were false. The plaintiff never saw the claims (despite explicitly stating she wanted to review them). The employee in the *Fitchie* case was allegedly ultimately fired because of the baseless claims made by her attorneys without her knowledge or consent. PAGA's fee shifting structure means there is almost no risk for attorneys similarly abusing the PAGA demand process, while they stand to make immense sums of money in legal fees. Meaningful reform requiring worker certification of claims under PAGA will protect workers as well as employers.

The current statutory scheme creates enormous protection for attorneys committing misconduct at the expense of the employees they purport to represent, with only the most remote risk of consequences. Attorney-Client Privilege dramatically limits the ability of a defendant to investigate what actually occurred between the employee/claimant and attorney in a baseless legal claim. Rule of Professional Conduct 4.2 also prevents an attorney for an employer, or anyone acting on their behalf, from speaking with the representative employee even if there is reason to believe the claim was meritless. Finally, even if employers are able to prove in court that the case was meritless, there is no ability to recover the costs of litigation, absent explicit evidence showing intentional misconduct by the law firm. These claims are also largely uninsurable, leaving employers with no option to mitigate the risk and expense from baseless PAGA claims.

The result is entirely one-sided leverage allowing law firms to file frivolous claims without risk, forcing massive shakedown settlements because the cost of defense is so monumental. Thus, we recommend every PAGA notice be required to include the proposed employee certification.

A further problem with the proposed regulation is that any potential "high-frequency filer" will do one of two things to avoid the "high-frequency filer" designation – stay just below the two hundred notice threshold or create separate entities acting as clearing houses to submit PAGA notices without triggering the "high-frequency filer or vexatious filer standards thus thwarting the Agency's purpose.

If the Agency chooses to retain some "high-frequency filer" designation, it should reduce the threshold number for a filer to be considered a "high -frequency filer." We recommend any filer who reaches double digits – the number 10 – be subject to the "high-frequency filer" requirements.

2. *§ 17420 Written Notice by Aggrieved Employee or Representative (PAGA Notices).*

With respect to the proposed requirements for the notice, the Agency should clarify what makes a notice “sufficient” and the consequences of an "insufficient notice."

The Agency proposes "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." *See* § 17420(d) (2)(B). As currently drafted, our members envision increased litigation over what is deemed "sufficient."

It is unclear what standards should be used in evaluating submissions. The Agency should provide examples such as minimum factual fields based upon the alleged violation.

Further, the proposed regulations are silent on the consequences of defective notice. Employers need predictability on whether a defect is jurisdictional, curable, or waived. The Agency could clarify which defects require re-filing, which can be amended, and the effect, if any, on tolling and timing.

The proposed regulations should also include a requirement that all notices sent to the Agency must be accommodated by a declaration sworn under oath by the claimant’s counsel that claimant’s counsel has reviewed claimant’s records prior to sending the notice, and that after doing so they believe that the reviewed records support the claimant’s alleged violations.

3. *§ 17420.5. Amendments to PAGA Notices.*

The proposed regulations provide that an employee may amend a PAGA notice. "The 65-day review and 120-day investigation periods applicable to PAGA notices as set forth in subdivisions (a)(2)(B) and (c)(1)(E) of Labor Code section 2699.3 also apply to amended PAGA notices." Employers need certainty when amended notices restart cure opportunities and deadlines, if at all. The proposed regulations should address when an amended notice alleges "violations or facts not included in an earlier PAGA notice" for purposes of the 33-day cure proposal deadline; whether an employee can amend in the midst of a pending cure process and how that impacts that process.

4. *§ 17430. Confidential Cure Proposals.*

The proposed regulations provide that the small employer cure proposal must state specifically the total number of employees employed by the employer during the one-year period before the filing of a claimant's PAGA notice. We ask that the Agency clarify employee-count methodology for small employer cure eligibility because the proposed regulations reference that the small employer cure process may be declined or concluded at any time in circumstances where separate business entities may constitute a joint employer or single enterprise and the total number of employees exceeds the small employer threshold. *See* § 17430 (c). The Agency should provide guidance to clarify how that will be determined and at what point in the process. As drafted, the proposed regulations state the Agency can make the decision "at any time." *Id*. Further, does the Agency look at affiliates, staffing arrangements, joint-employer/single-enterprise factors, or other evidentiary standards that employers can rely upon in making cure determinations?

5. *§ 17439 Cure Dispute Hearings.*

The proposed regulations provide that cure hearings shall be presided over by a deputy *or agent* of the Labor Commissioner's Office. "Agent" is not defined and is vague. Given the complexities of these hearings, the Agency should consider a limited, specific group of hearing officers.[3]

6. *§ 17421. Employer Response.*

The proposed regulations invite employers to provide responses to PAGA notices with the Agency. Since the 2024 Amendments, many employers have in fact already submitted such responses to PAGA notices to the Agency. Many of these responses have noted that the underlying PAGA notices submitted by the claimants were generic and duplicative of other PAGA notices submitted by counsel representing the claimant. Many of these responses have noted that the generic nature of the PAGA notice received by the responding employer rendered it difficult if not impossible to analyze the alleged claims by the claimant, or consider whether a cure is justified or even possible, etc. Further, many of these responses

[3] In the Early Evaluation Conferences, member experience thus far has also been across the map due to similar language issues. Under the current statute, the parties can be assigned to anyone, with some parties assigned through the federal alternative dispute resolution program, which has limited services at no cost to the parties. The current statute, nor the proposed regulations, address the cost issue. Labor Code Section 2699.3 (f) (12) provides that the EEC shall be conducted by a judge or commissioner or *such other person knowledgeable about and experienced with issue arising under the code*."

have nonetheless sought to address the broad allegations in the underlying PAGA notices and provided rebuttal evidence to the Agency in the form of written policies, pay records, and time records demonstrating compliance and the lack of merit of claimant's allegations. However, the Agency has generally not taken any action in response to such rebuttal letters, nor even acknowledged receipt of the rebuttal letters.

While we appreciate the Agency's express invitation for employers that receive PAGA notices to submit rebuttals, the Agency should adopt a clear practice in the regulations regarding how it will respond to such rebuttal letters. If an employer submits a rebuttal to a PAGA notice, the Agency should, at a minimum, conduct an initial investigation of the PAGA notice, provide notice to the claimant and the responding employer of such an investigation, and stay any ability for claimant to pursue a PAGA matter in court during the course of the Agency's initial investigation. Without assurance that rebuttal letters will be reviewed and considered in due course by the Agency, employers who already take on considerable risk and attorney expenses upon receipt of a PAGA notice will be hesitant to take on the significant additional burdens and expenses involved in providing rebuttal letters.

7. *§ 17460. Submitting Court Filings and Records to Agency; Service and*
§ 17461. Submitting Proposed Settlements of Civil Actions to the Agency; Notice to Other Persons with Pending Actions.

The proposed regulations require a claimant to provide notice *by email* to all other persons who have actions pending against the same employer at the time the proposed settlement is filed in court. Further, they state "The settling defendant employer shall verify the list of other persons who have pending actions."

The proposed regulations impose diligence and verification obligations that may be difficult, if not impossible, to satisfy when the portal is incomplete, lagging, or where typographical errors have prevented notice from reaching the employer. The Agency should provide a good-faith safe harbor for employers and plaintiffs who rely on the PAGA Case Search portal.

Further, the regulations require employers to disclose email addresses of former or current employees that are otherwise not public.

Finally, the 45-day Agency review of any settlement is difficult given the current state of court calendars, making coordination almost impossible. Court hearing calendars may not always align with the proposed 45-day minimum. The Agency should provide guidance on how parties should proceed if the court sets a hearing date sooner, and whether filing or continuance efforts satisfy the regulation.

The proposed regulations provide that "Any person entitled to notice of a proposed settlement agreement under subdivision (b) may submit comments to the Agency in support of or against the proposed settlement." We recommend that the regulations provide that the parties also receive copies of those comments to address and expediate any concerns.

8. *§ 17462. Proposed Settlements Before Commencement of a Civil Action; Release of Claims Against the Employer.*

Proposed § 17462 provides that *"no settlement agreement between an employer and an employee that is reached after the employee has filed a PAGA notice with the Agency, but before the employee commences a civil action asserting claims under PAGA, may purport to release the employer from any PAGA claims belonging to the employee, the state, or any other person, or any claims belonging to the state or any other person."*

§ 17462 contradicts the purpose of the proposed regulations for two reasons. First, it does not permit an individual settlement between an employer and employee that releases the employee's own PAGA notice before the employee files a lawsuit based upon that notice. LeadingAge California members, especially our small provider members, need to be able to resolve PAGA claims swiftly to avoid devastating financial settlements or verdicts. Oftentimes, employee claims can be settled when counsel from both parties meet and confer over the PAGA notice and claimant's counsel realizes that the veracity of the individual employee PAGA claim is not as the claimant presented. The parties agree to settle at a reasonable amount that is satisfactory for both parties. Prohibiting our members from engaging in this process is antithetical to the entire purpose of the 2024 reforms and the 2026 proposed regulations and does not violate any current law.

Second, there is no reason the same is not true when the parties are seeking to settle a representative PAGA claim on behalf of the State. The same interests are controlling. If the employer receives a PAGA notice and it is in its best interest to engage immediately with claimant's counsel, it should be permitted to do so. This is especially true of our smaller provider members who do not have the financial wherewithal to weather any prolonged litigation. Once a lawsuit commences, respective positions are hardened and an opportunity for early resolution is lost.

We recommend that the Agency remove this proposed section in its entirety or revise it to require the minimum safeguard of providing notice to the Agency that a settlement is reached and allowing the Agency time to review it.

9. *Retroactivity.*

Our members need certainty regarding which notices and cases the new procedural requirements may apply. The Agency should state expressly the applicability date and that the provisions apply only prospectively to notices filed after the effective date.

We appreciate the opportunity to share our comments with the Agency and the effort it has made through these proposed regulations to stop abuse. Our members have had to direct significant settlement amounts in PAGA litigation that could have been spent caring for California's older adult population. Please contact me at mrose@leadingageca.org with any questions.

Sincerely,

Meghan Rose
General Counsel and Chief Government Affairs Officer