From: Jonathan Genish
To: West, Danielle@Labor
Subject: Blackstone Law"s Written Public Comment for Today"s Hearing
Date: Thursday, April 9, 2026 11:01:41 AM
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Danielle:

Blackstone Law strongly supports the LWDA's stated goals of improving notice quality and discouraging unsupported filings. However, the proposed regulations - particularly the "high-frequency filer" threshold, the "vexatious filer" designation, the claimant certification requirement, and the burden-shifting framework in cure proceedings - are fundamentally misaligned with those objectives and risk materially weakening California's last remaining mechanism for meaningful labor law enforcement.

1. The "High-Frequency" and "Vexatious Filer" Framework Is Arbitrary and Misguided

The proposed 200-notice threshold (and suggestions by many at the public hearing to reduce it to 50) highlights the core defect: the rule targets volume, not misconduct.

- Filing volume is not a proxy for merit. It reflects firm size, resources, and commitment to enforcement, not abuse.
- Larger firms are better equipped to litigate against sophisticated employers, fund complex cases, and deliver meaningful recoveries.
- The regulation perversely penalizes the very firms most capable of enforcing the Labor Code, while allowing smaller, potentially less rigorous filers to avoid scrutiny.

"Vexatiousness" is a legal determination, not an administrative label. Courts already have established tools (demurrers, motions to strike, sanctions) to address meritless claims. Delegating that determination to the LWDA without objective standards or adjudication invites arbitrary enforcement and misuse as a litigation weapon.

Big does not equal vexatious. Merit is the only relevant metric, and only courts can determine it.

2. The Claimant Certification Requirement Is Legally and Practically Unsound

The proposed requirement that employees certify (and some insisted on it being under penalty of perjury) that alleged violations "accurately describe" what they suffered is fundamentally flawed:

- Most wage-and-hour violations (e.g., regular rate miscalculations, wage statement defects, derivative penalties) are not observable by employees and require legal and payroll analysis.
- Employees do not have access to the underlying data or the legal framework necessary to

evaluate these claims.
- The requirement creates a severe asymmetry: employees must attest to legal conclusions, while employers, who possess all relevant information, are not subject to equivalent sworn obligations.

This turns a structural information imbalance into a litigation trap for employees, exposing them to impeachment based on their inability to explain complex legal theories.

The existing attorney certification already addresses the LWDA's concern. Shifting that burden to employees is unnecessary and improper.

3. The Cure Process Unfairly Shifts the Burden to Employees Without Access to Evidence

The regulations require employees to prove that an employer's cure is inadequate, while:

- Denying access to discovery;
- Leaving all relevant records in the employer's exclusive control; and
- Acknowledging the very information asymmetry they fail to remedy.

This is procedurally untenable. The burden should remain with the employer—the party with the data and the one asserting cure.

4. Broader Policy Context: This Is an Attempt to Undermine the Last Viable Enforcement Mechanism

These regulations cannot be evaluated in a vacuum.

Class actions - the primary mechanism historically used to enforce wage-and-hour laws - have been systematically eroded through the widespread adoption of arbitration agreements. In many cases, PAGA is now the only remaining vehicle for employees to enforce Labor Code violations at scale.

Instead of strengthening that mechanism, these regulations:

- Impose heightened procedural burdens on employees;
- Discourage capable firms from participating in enforcement;
- Create reputational and strategic disadvantages for plaintiff-side counsel; and
- Tilt the playing field further in favor of well-resourced employers.

At their core, these rules move in the opposite direction of legislative intent: they weaken private enforcement without providing any meaningful substitute.

5. Bottom Line

The proposed regulations:

- Substitute arbitrary metrics (firm size, filing volume) for actual misconduct;
- Impose obligations on employees that they are structurally incapable of meeting;

Exacerbate information asymmetries; and
- Undermine the only remaining scalable enforcement mechanism in the wake of arbitration-driven erosion of class actions.

If implemented, they will not improve PAGA, they will materially diminish it.

The appropriate path forward is straightforward:

- Provide clearly articulated standards for the PAGA letters, and anchor any enforcement mechanism to objective, adjudicated misconduct;
- Remove the claimant certification requirement;
- Align burden of proof with access to evidence; and
- Preserve a level playing field between employees and employers.

Anything less risks converting PAGA from a meaningful enforcement tool into a hollow formality. We thank you for your time and attention.

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From: West, Danielle@Labor <Danielle.West@labor.ca.gov>
Sent: Tuesday, March 24, 2026 1:46 PM
To: West, Danielle@Labor <Danielle.West@labor.ca.gov>
Subject: LWDA Notice of Public Rulemaking Hearing, OAL Notice File No. Z2026-0121-03; Private Attorneys General Act (PAGA)

[External Email].
Please take notice that the California Labor and Workforce Development Agency will hold a public hearing on **Thursday, April 9, 2026, at 9:00 a.m.**, to allow any person interested in presenting oral comments relating to the proposed rulemaking action referenced above an opportunity to do so. The hearing will be conducted via Zoom. A copy of the LWDA's Notice of Public Rulemaking Hearing is attached, which includes additional information about the hearing and submitting public comments during the hearing.

Additional information regarding the LWDA's proposed rulemaking action is available on the

LWDA's Web site at https://www.labor.ca.gov/resources/paga/rulemaking/.

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