WILSHIRE LAW FIRM, PLC
660 S. Figueroa St., Sky Lobby
Los Angeles, CA 90017
Tel: (213) 381-9988
Fax: (213) 381-9989
wilshirelawfirm.com

Sean Paisan, Esq.
John Yslas, Esq.
John Lucas, Esq.
Tyler Woods, Esq.
Nicol Hajjar, Esq.
Thiago Coelho, Esq.
Benjamin Haber, Esq.
Arrash Fattahi, Esq.

August 17, 2026

Via Email Only

Danielle West
PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, CA 95814
Email: Danielle.West@labor.ca.gov
Alisa.Melendez-Collier@labor.ca.gov

Re: Comments on Proposed PAGA Rulemaking

Dear Ms. West:

On behalf of myself and my colleagues at Wilshire Law Firm, we respectfully submit the following non-exhaustive supplemental comments including opposing section 17415 of the proposed Labor Code Private Attorneys General Act of 2004 ("PAGA") regulations, including concerning the proposed new designations of "high-frequency filers" and "non-compliant filers." As noted in our March 23, 2026 comment, which is incorporated herein by reference, these designations continue to appear to unfairly penalize attorneys and law firms, and thus crucially, in turn, also penalize workers seeking top-notch legal representation by counsel who very actively advocate for workers' rights, and therefore may be best equipped to help them. Further, the Labor and Workforce Development Agency (the "Agency") proposes to publish a list with these Scarlet Letter-style labels, and require attorneys to disclose the designations in their notices to employers accused of violating the Labor Code. We respectfully believe that the Agency should not be in the business of imposing such punishments, much less engaging in what appears to be the public shaming of attorneys and law firms, and in particular in a manner well beyond the Agency's power to do so and even crosses over into improperly attempting to legislate.

We appreciate the Agency's attention in reviewing and selectively revising some of the proposed rules in light of prior comments. However, with respect, some of the revisions now make matters even worse for workers and the attorneys who represent them, including by now proposing language that that is even more ambiguous, creating uncertainty as to how to comply. Among the issues discussed below, this proposed section 17415 continues to apply pejorative labels, and continues to impose arbitrary limitations on the practice of law that will make it unnecessarily more difficult for California workers to hire the attorney of their choice. Respectfully, we continue to believe such regulations of the legal profession — and in particular the punitive measures against attorneys and law firms — are far beyond the scope and authority of the Agency, are not authorized by statute, and otherwise are not appropriate including for the reasons summarized below.

I. Statement of Interest

I again write in my capacity as a Senior Partner and the Chair of Wilshire Law Firm's Wage & Hour Class Action Department, which consists of approximately 45 attorneys with a very strong base of experience and history of success in wage and hour practice. We are fierce and ethical advocates for our clients and workers' rights. I and other attorneys in our Wage & Hour Class Action Department have significant AmLaw 100 law firm experience, including at the partner level. We conduct serious litigation work on behalf of California workers. Our prior comment of March 23, 2026, provided examples of our leadership in this area, including prevailing last year in a wage-and-hour class action jury trial and securing a multimillion-dollar settlement after the verdict, and also leading the charge to seek the successful depublication of the *Allison v. Dignity Health* opinion which, had it remained published, would have significantly hampered class actions for workers. We also recently prevailed in a partially published court of appeals decision regarding arbitration agreements (*Cluck et al. v. GEO Secure Services, LLC et al.*) and have another important case pending before the California Supreme Court. Achieving justice for the workers we represent is at the heart of what we do, and motivates these comments.

Also as noted in our March 23, 2026 comment, I am a 30-year attorney. Before I joined Wilshire Law Firm in 2022, I held leadership positions as a partner for several years with three international law firms ranked in the AmLaw 100: Foley & Lardner, Norton Rose Fulbright, and Seyfarth Shaw. This gives me a unique perspective, having served as a defense attorney in prominent national law firms for many years. I have also served two terms as the Southern California Regional President of the Hispanic National Bar Association ("HNBA"), and I am currently a member of the Mexican American Bar Foundation Board of Trustees. I have also served as the National Chair of the Communications Committee of the HNBA and as a member of the Board of Directors of the California Minority Counsel Program. I was also appointed by two mayors and served as a Commissioner with the Los Angeles Civil Service Commission and the Los Angeles Convention Center Commission. I feel a deep, personal responsibility to seek justice and open doors for others in my community. My colleagues at Wilshire Law Firm share similar accolades and values.

We continue to share the Agency's stated concern that there is a need to provide better guidance and clarity for employees and employers about their respective rights and obligations. We again offer our comments in the spirit of collaboration, in furtherance of our common goals.

II. High Frequency Filings Do Not Evidence Frivolity or Malicious Intent

The mere fact that an attorney or law firm files a certain number of PAGA notices does not and cannot, by itself, be any basis for attributing to that attorney or law firm some intent to harass, and also does not and cannot be the basis for prejudging such notices as being frivolous.[1] As such, we continue to have grave concerns about subdivision (c) of proposed section 17415, which would brand certain attorneys and law firms with the Scarlet Letter-style label of "high-frequency filer" and force these attorneys and law firms to display this designation prominently in its notices to employers alleged to have violated the Labor Code. This appears to be a punitive measure that goes well beyond any statutory authorization, as discussed in more detail below.

[1] Even if the LWDA were to determine a PAGA submission is too conclusory, that obviously does not mean the allegations are frivolous or without merit — which would need to be determined by a full-scale factual investigation.

The revision now would penalize not only on the basis of the number of PAGA notices filed by a law firm, but also by the number of notices filed by an individual attorney — setting a threshold of 100 filings by an attorney in a 12-month period to be branded a "high-frequency filer." This, coupled with the threshold of 200 filings by a law firm, continues to be arbitrary. Further, the revised proposal now specifically penalizes larger law firms with more attorneys. For example, if each of Wilshire Law Firm's 45 wage and hour attorneys filed an average of just five LWDA notices in a 12-month period (that is, fewer than one every two months), this would be 225 notices, and Wilshire Law Firm would be branded as a "high-frequency filer." Meanwhile, a solo practitioner could still file up to 99 such notices during the same period — that is, ***nearly 20 times as many*** as a Wilshire Law Firm attorney during the same period — yet avoid being labeled a "high-frequency filer." With all due respect, this outcome would not only be unfair and arbitrary, it also does not make rational sense. The proposed rules virtually guarantee that larger law firms inevitably will be branded as high-frequency filers. The only way to avoid this would be for larger law firms to stop taking PAGA cases, which clearly would harm the workers looking for attorneys to represent them. It would also arbitrarily force such law firms to have their clients certify PAGA letters, where, inexplicably, other such law firms and lawyers filing fewer charges would not.

Further, this penalty label and arbitrary additional requirements would apply ***even if all of the notices are valid and meritorious***. As noted, this goes against the primary purpose of PAGA, which is to allow workers, as proxies for the State, to vindicate their meritorious claims. The language of the proposed rules, specifically attributing frivolity to notices bases solely on the number of notices submitted, and incorrectly labeling such frequency as an "abusive practice" (proposed subsection (a)(2)), demonstrates, with respect, that the Agency is inappropriately speculating as to the state of mind of attorneys and law firms, rather than considering the actual merits of the claims. We respectfully assert that each PAGA notice should be considered on its own merits and not prejudged based on how many other notices may have been filed against other employers. We also respectfully assert that the proposed regulation will have the effect of discouraging meritorious LWDA filings, especially by larger law firms with a deep well of knowledge and experience in prosecuting such claims. The Agency should not punish larger law firms — and the workers they represent — for the expertise of their attorneys. Nor should the Agency, through these regulations, deter workers from hiring such attorneys to advocate for their interests.

III. Proposed 'Non-Compliant Filer' Label Violates Due Process

While the Agency's modified proposed regulations no longer pejoratively label attorneys as "vexatious filers," the remaining substance of the proposed regulations is largely unchanged and still proposes to brand certain attorneys with yet another Scarlet Letter-style label — as a "non-compliant filer." Not only would the Agency use this punitive label for its own internal purposes, it proposes to publish "a list on the online PAGA filing portal identifying all persons, attorneys, or law firms designated as high-frequency or non-compliant filers." (*See* subdivision (e) of section 17415.) Such efforts to incorporate the public shaming of attorneys into the Agency's regulatory scheme, like other regulations proposed, run afoul of any statutory authority vested in the Agency to make rules, as discussed below. Equally troubling, the Agency proposes imposing these punishments without adequate due process. The notice and opportunity to be heard amounts to a mere 30-day window for an attorney to respond to notice that the "non-compliant filer" label will be applied. There is no independent review, as the Agency itself would evaluate any challenge to its own designation decisions. This is woefully insufficient, in light of the harsh consequences for wage-and-hour attorneys and the California workers they represent.

First, with respect, it is entirely inappropriate for the Agency to adjudicate the sufficiency of pleadings, as doing so will usurp the power of the Courts. As noted, the California Supreme Court has ***rejected*** the idea that an aggrieved employee "must have some modicum of substantial proof before proceeding with discovery" (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545), stating: "Hurdles that impede the effective prosecution of representative PAGA actions undermine the Legislature's objectives." (*Id.* at 548.) Imposing a heightened pleading standard for employees giving notice of their claims to the Agency similarly would undermine the legislative intent of PAGA. After all, a Court finding of insufficient pleading also follows notice and an opportunity to be heard. Here, in contrast, the Agency would deem notices "non-compliant" without any apparent due process.

Second, nowhere in the proposed regulations does the Agency purport to establish the legal standard it will adopt to determine whether an attorney or law firm has met the Agency's heightened pleading standard. In the absence of any defined standard which the Agency would apply, attorneys and law firms must speculate as to what the Agency might deem sufficient.

Third, the modified regulations now propose punishing an entire law firm if even just one of its attorneys is designated as a non-compliant filer. Specifically, subdivision (d)(3)(A)(ii) now provides, in relevant part:

> … an attorney with a law firm where one or more attorneys has been designated a non-compliant filer shall include a cover letter with any PAGA notice certifying (1) ***one or more attorneys with the law firm have been designated as non-compliant filers*** by the Agency pursuant to this regulation, and (2) that any attorney designated as a non-compliant filer was not involved in the preparation, filing, or handling of the matter to which the PAGA notice relates. Failure to comply with this certification requirement may be grounds for designation of the filing attorney as a non-compliant filer in accordance with the provisions of this regulation.

(*Id.* (emphasis added).) In other words, ***all of the attorneys at a law firm*** are subject to punitive measures, including forced disclosure in a notice to employers that a different attorney at the law firm has been designated a non-compliant filer. This punishment applies even if the attorney submitting the PAGA notice is ***not*** himself or herself designated as a non-compliant filer. With respect, this is a very troubling punitive measure upon attorneys who have done nothing wrong. It also raises concerning issues as to the effect the Agency's punishments will have on the careers of dedicated wage-and-hour attorneys. For example, what if a law firm has never been designated as a non-compliant filer, but then hires an attorney who has been so designated? Under the proposed regulations, the newly hired attorney's designation as a non-compliant filer would effectively be imputed to the ***entire law firm***, forcing all attorneys at the firm to begin disclosing the designation in their own PAGA notices. This is patently unfair. These "are sanctions that potentially could have a devastating impact on an attorney's ability to practice law." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 652.)

/ / /
/ / /

IV. The Modified Proposed Regulations Are Vague and Ambiguous

The proposed regulations also contain provisions that are vague and ambiguous, creating uncertainty as to how attorneys and law firms will comply. For example, subdivision (d)(3)(B) sets forth the following unclear requirement:

> In circumstances where a person or attorney is subject to a prefiling screening order as provided in this subdivision, tolling of the applicable limitations period under subdivision (e) of Labor Code section 2699.3 shall commence upon the submission of a PAGA notice to the Agency for review before its acceptance for filing. However, applicable periods for the investigation of alleged violations or other processes set forth in subdivisions (a), (b), or (c) of Labor Code section 2699.3 shall not commence unless and until a conditionally filed PAGA notice has been screened and accepted for filing by the Agency.

(*Id.*) Among the ambiguities: Whose submission is affected by this provision? Just a PAGA notice submitted by a person or attorney subject to a prefiling screening order, or also any PAGA notice submitted by a law firm subject to the requirements of subdivision (d)(3)(A)(ii), discussed above?

Also, what statutory authority empowers the Agency to toll the statute of limitations via this regulation? How long will tolling of the statutes of limitation continue? Will it be the usual 65 days? Does this mean a non-compliant filer must potentially file a Court complaint before the period for the Agency to investigate has run? The proposed regulations leave all of this uncertain.

By way of further example, subdivision (d)(3)(C) is vague and ambiguous as to when a particular PAGA notice is deemed accepted for filing. Specifically, when a non-compliant filer subject to a prefiling screening order submits a PAGA notice, the Agency is to determine whether it "complies with applicable statutory and regulatory requirements," then "provide written notice of its determination by certified mail to both the claimant and employer." (*Id.*) However, if the Agency does not provide such notice to the claimant and employer within 30 days of submission, then the PAGA notice "will be deemed accepted for filing ***upon expiration of the prefiling screening period***." (*Id.* (emphasis added).) This text leaves uncertain when the prefiling screening period ends. There does not appear to be any provision anywhere in the proposed regulations defining when a prefiling screening period ends. Such a period does not appear ever to "expire" under any provision of the proposed regulations. Instead, under subdivision (d)(4), a prefiling screening period apparently ends only if a non-compliant filer petitions the Agency to remove the non-compliant filer designation. Does this mean that a PAGA notice submitted by a non-compliant filer shall not be deemed accepted for filing until after the non-compliant filer successfully petitions for removal of the punitive designation? Meanwhile, what happens with the claims on behalf of the aggrieved employees? It appears the regulations would leave the aggrieved employees in limbo for an indefinite period. This outcome would harm workers and contravene the purposes of PAGA.

V. The Agency Lacks Authority to Impose These Punishments

With all due and proper respect, the punitive measures that the Agency proposes — including its Scarlet Letter-style labels for alleged high-frequency and non-compliant filers, and its apparent arbitrary public shaming of certain law firms and attorneys — goes well beyond any possible authority the Legislature vested in the Agency. Among other things: "Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations." (*American National Ins. Co. v. Fair Employment & Housing Com.* (1982) 32 Cal.3d 603, 618-619.) Here, nothing in the Labor Code contains any of the punishments that the Agency now seeks to create. As such, the Agency very clearly is improperly attempting to enlarge or impair the scope of the Labor Code — and particularly PAGA. Doing so is not authorized by law.

Further, as noted, Government Code section 11346.2(b)(4)(A) requires that any proposed regulations must include, as part of the initial statement of reasons for the proposal, "[a] description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives." While we respectfully do not believe the Agency has authority to adopt the proposed regulations regarding high-frequency and non-compliant filers, we also believe that in proposing such regulations, the Agency must provide reasonable alternatives, yet has not done so.

VI. The Regulations Cannot Apply Retroactively

The modified regulations on their face expressly apply retroactively "to all pending administrative processes" — that is, to cases already under way which were commenced prior to implementation of the new regulations. (Section 17400, subd. (b).) Such retroactive application is improper. "New statutes are presumed to operate only prospectively absent some clear indication that the Legislature intended otherwise." (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207; *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 393.) The same principle naturally applies to regulations. With respect, the Agency lacks authority to apply the measures discussed in this letter and indeed other proposed regulations retroactively to any PAGA filings prior to implementation of the proposed regulations.

* * *

For all of these reasons, we continue to believe the Agency's apparent efforts which would improperly and unfairly result in arbitrarily penalizing law firms and attorneys (and in turn, workers — who are of paramount importance), and to regulate the practice of law, are arbitrary, unfair, unwise, and beyond the scope of the Agency's authority. These regulations, if implemented, would ultimately harm the California workers who count on experienced and highly skilled wage-and-hour counsel to advocate for their rights. Thus, we respectfully believe that the modified proposed rulemaking in Section 17415 should be omitted. Thank you for considering our comments.

Sincerely,

WILSHIRE LAW FIRM

John G. Yslas, Esq.