LeadingAge CA

August 18, 2026

Ms. Danielle West, PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, CA 95814
Submitted via email: Danielle.West@labor.ca.gov

Re: Labor Code Private Attorneys General Act of 2004 Modifications to Text of Proposed Regulations

California Labor and Workforce Development Agency:

LeadingAge California appreciates the opportunity to provide feedback to the Labor and Workforce Development Agency's (Agency's) August 3, 2026, notice of modifications to its proposed Private Attorneys General Act of 2004 (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 continue to have concerns about revisions made, and not made, to the proposed regulations. We outline some of them below. Most particularly, our members still have concerns regarding high filer definitions and restrictions on individual PAGA settlements.

1. **SECTION 17420(F) –** The Filer Safeguards Should Require Claimant Authorization in Every Case and Permit Firm-Level Non-Compliant Designations.

The added Agency record supplies direct support for *universal claimant* authorization. The Agency reports cure conferences in which claimants denied, disclaimed, or contradicted violations alleged in notices filed for them, while counsel appeared unfamiliar with the matters. Those problems do not depend on whether counsel has crossed the 100-notice threshold.

Section 17420(f) still permits either the claimant or the representative to sign. Section 17415(c)(1)(B) requires the claimant's signature only for a high-frequency filer and does not require a declaration under penalty of perjury. This still leaves our members - large and small employers alike - at risk of defending against PAGA claims that the Agency has recognized are abusive and at odds with its purpose.

Requested revision:

- Require every represented claimant to sign a declaration under Code of Civil Procedure section 2015.5 confirming review, authorization, and personal experience of each alleged violation. We recommend the Agency require two different certifications: the claimant should verify the facts and personal experience; counsel should verify reasonable inquiry, legal support, and authorization.

- Require counsel to sign a separate section 128.7 certification.
- Include a law firm in the definition of "non-compliant filer" and allow a firm-level prefiling screening order when the pattern arises from common intake, templates, supervision, or filing practices.
- Attribute a notice to every attorney and firm that signs, submits, substantially prepares, or supervises the filing; normalize firm aliases in Agency data.

2. **SECTIONS 17420(G) AND 17450(F) –** The Settlement-Amendment and Release Provisions Must Preserve Individual Settlements.

Sections 17420(g) and 17450(f) prohibit releasing an unnotified violation or theory in "any settlement agreement" in the PAGA action. Without a carveout, that text could conflict with modified section 17462, which expressly permits settlement of the employee's own underlying individual non-representative claims. The rules should state that the notice-to-release limits only the PAGA release and does not restrict a negotiated release of the employee's own non-representative PAGA claims. PAGA plaintiffs act as the state's proxy on the representative claim only, while the employee retains separate individual claims.

Modified section 17462 responds to LeadingAge California's earlier concern by preserving individual settlements and excepting resolutions reached through the small-employer cure process or subject to court approval. We renew our request for a practical pre-suit route that permits parties to submit a proposed PAGA resolution for Agency review and, if necessary, a limited approval proceeding without commencing full merits litigation solely to create an approval vehicle.

Requested revision:

- Add to sections 17420(g) and 17450(f): "This subdivision does not restrict settlement or release of the claimant's own individual, non-PAGA claims."
- Clarify that a settlement-related amended notice gives the employer a new cure opportunity as to newly added matter whenever the statute permits cure.
- Delete or define section 17462's phrase "any other claims belonging to the state or any other person," which extends beyond the PAGA claims addressed by the chapter.

3. **SECTION 17461 –** Should Replace Absolute Employer Verification with A Due-Diligence Safe Harbor and Limit Notice to Overlapping Pending Actions.

LeadingAge California members appreciate the modification that narrows settlement notice from every undisclosed PAGA notice to plaintiffs with pending PAGA civil actions. Modified Proposed Text section 17461(b)(1), at 35. The remaining rule nevertheless requires defense counsel to verify that the list is "accurate and complete." The Agency controls the portal and the contact information, while employers may face filings under a facility name, trade name, former entity name, management-company name, or typographical variant. An absolute warranty creates breach risk even after a diligent search.

Notice to every PAGA plaintiff against the same legal entity also sweeps too broadly for multi-site providers. For example, a case involving a cook's meal-period theory at one facility may have no bearing on a caregiver's reimbursement claim at another. The notice should reach only actions that overlap in at least one respondent, violation or theory, relevant period, worksite or policy, and affected employee group. That focus will reduce strategic objections from unrelated counsel.

<u>Requested revision:</u>

- Require the Agency to generate or certify the list of potentially overlapping pending actions from its own data, including current counsel email addresses. Alternatively, create a safe harbor when defense counsel searches the portal using the respondent's legal names, known trade and facility names, and known aliases, checks the employer's litigation docket, and discloses the search date and terms.
- Limit mandatory notice to pending civil actions with a stated overlap in respondent, claim or theory, period, worksite or policy, and employee group.
- Direct notice to counsel of record rather than requiring disclosure or use of current or former employees' personal email addresses.
- Require settlement comments to identify the commenter's case number, the precise overlap, factual support, and requested Agency action; require service on the settling parties and allow a seven-day response.
- Require the Agency to notify the parties of any completeness defect within five business days; otherwise, the 45-day period runs from the original submission.
- Clarify that the parties comply when they request a hearing at least 45 days after submission or promptly seek continuance; preserve the court's authority to manage its calendar.
- Resolve the sequencing conflict between section 17460(a)(3), which permits submission before or on the day of court filing, and section 17461(a)(2), which requires a properly noticed motion already filed with the court.

4. THE REGULATIONS SHOULD NOT APPLY TO PENDING SETTLEMENTS.

Retroactive application of sections 17420.5, 17450.5, 17460, 17461, and 17462, risks disrupting and delaying good faith negotiated settlements. Proposed section 17400(b) suggests that the regulations' new procedural requirements for settlements would apply to a settlement where a motion for settlement approval has been filed or to a pending PAGA action where the settlement is being administered.

5. SECTION 17410(B) – Employer Timely Documents Uploaded to The Wrong Portal Should Be Considered Filed.

Section 17410(b) states that a document does not count as filed unless the filer selects the correct portal link. The Addendum explains that employers have submitted cure proposals through the "Employer Response" link, after which the portal failed to route those submissions to the PAGA Unit.

An employer who uploads the correct document timely, identifies the correct matter, and pays the fee has supplied the Agency with the information needed to route it. The Agency should automate rerouting or provide a short relation-back cure period. It should not result in forfeiture of a time-sensitive statutory cure right.

Requested revision:

- Treat a timely document uploaded through an incorrect PAGA portal link as conditionally filed at the original upload time.
- Require the Agency to reroute the submission or give deficiency notice within two business days and allow five business days to correct the category without loss of the original filing date.

6. SECTIONS 17420, 17450 AND APPENDIX H – The Appendix Should Use Specific Fields and Require the Penalty Source.

Appendix H supplies the form that claimants will use. Its "Employment Background" section consists of one large narrative box, and each alleged violation uses only three fields: claim type, Labor Code section, and a facts-and-theories box. That format does not implement the regulation's promise of standardized, identifiable data. It will continue to permit notices that obscure the legal entity, licensed facility, job, shift, date range, policy, and factual event the claimant means.

The Agency should also restore the deleted requirement that a claimant identify the statute that supplies the civil penalty. A notice must give the employer enough information to evaluate penalty information directly serves both purposes and prevents a claimant from shifting after notice between a specific statutory penalty and the default PAGA penalty.

Requested revision to sections 17420, 17450, and Appendix H:

- Replace the single "Employment Background" box with mandatory fields for each respondent's full legal name, any facility or trade name, each worksite address, dates at each worksite, position, duties, classification, and typical shift.
- For a staffing, client-employer, joint-employer, successor, or related-entity theory, require claimant-specific facts supporting employer status for each respondent.
- For each alleged violation, require the exact statutory, Wage Order, or Title 8 subsection; the claimed date range; at least one illustrative occurrence; frequency; the policy or practice at issue; and the worksite and employee group for which penalties are sought.
- If the claimant alleges the same violation at another worksite, require the address, dates, and factual basis for that contention.
- Restore sections 17420(d)(2)(C) and 17450(c)(2)(C), requiring specific penalty provision for each claim.
- Add separate printed-name, role, signature, and date fields for the claimant and counsel.

7. NEW SECTION 17420(H) – The Deficiency and Amendment Provisions Should Protect the Employer's Full Response, Cure, and Investigation Periods.

New section 17420(h) allows the Agency to identify a deficient notice and gives the claimant up to 30 days to amend. It does not require service of the deficiency notice on the employer, state whether the original notice starts the 33-day employer deadlines or explain the effect of a corrective amendment on the 65-day review and 120-day investigation periods. The result could require an employer to decide whether and how to cure it before it receives the facts the Agency found missing.

The regulations should not allow a deficient notice to consume the employer's cure period and then permit an amendment to relate back without restoring the administrative opportunity that adequate notice was designed to create.

Section 17420.5(c) also needs a clear trigger. It states that the 65-day and 120-day periods apply to amended notices, while section 17420.5(d)(2) requires exhaustion of the periods before a settlement may include new claims. The text should state that the 120-day period applies only when the Agency timely elects an investigation, as the Addendum itself recognizes.

Requested revision:

- Require the Agency to serve every deficiency notice on the respondent and post it to the case docket on the same day.
- Toll the employer-response and cure periods as to deficient or newly added matter until the claimant serves a compliant amended notice.
- Start new 33-day, 65-day, and, when applicable, 120-day periods for a new violation, theory, respondent, worksite, affected group, or set of facts that expand the claim.
- State that Agency silence, automated acceptance, or acceptance after prefiling screening creates no presumption of notice sufficiency, exhaustion, standing, or merits.
- Define "reached a proposed settlement agreement" in sections 17420.5(d) and 17450.5(d) as an executed agreement by all settling parties, not a mediation proposal, a term sheet, or oral agreement.

8. **SECTION 17430 –** Should Define Small-Employer Headcount and Related-Entity Numbers Through Objective, Reviewable Standards.

The small-employer cure process applies to an employer that employed fewer than 100 employees during the specified year. Many LeadingAge California members presumably would come within that definition. Modified section 17430(c) counts every exempt and nonexempt current or former employee who worked at any time during the year, including temporary, seasonal, and intermittent workers and workers outside California. It then allows the Agency to end the cure process "at any time" when separate entities "may constitute" a joint employer or "single enterprise."

A cumulative unique-person count does not measure operational size in a high-turnover, around-the-clock care environment. For example, a 60-position residential care facility for the elderly (RCFE) may employ more than 100 different people over a year because of ordinary turnover, per-diem coverage, short-term leave replacement, and seasonal staffing. The rule also risks counting one-person multiple times after a transfer and counting staffing-agency workers whom another business employs. Those results would deny the statutory process to facilities that function as small employers on every day of the year.

The related-entity sentence compounds the uncertainty. California wage-order law uses defined employment tests, not a freestanding "single enterprise" label. Common ownership, shared branding, centralized payroll processing, group benefits, or a management-services agreement should not alone aggregate separately licensed RCFE entities. The Agency should make any joint-employer finding early, on notice, under a stated legal standard and evidentiary burden.

Requested revision:

- Use the maximum number of employees simultaneously employed during any payroll period in the relevant year, rather than the cumulative number of unique people who worked at any time. At minimum, state expressly whether the Agency counts unique natural persons and prohibit duplicate counting across transfers or concurrent assignments.
- Count only persons employed by the respondent under an applicable Labor Code or Wage Order test; do not count staffing-agency workers without an evidence-based joint-employer finding.
- Exclude independent contractors, volunteers, residents, and workers employed outside California.
- Delete "single enterprise" unless the Agency defines it and identifies statutory authority for using it in this cure-eligibility context.
- Require the Agency to decide a disputed aggregation issue within the initial 14-day review period, identify the evidence and legal standard, and allow the employer to respond before termination.
- Make the eligibility determination final for that cure proceeding absent fraud or previously unavailable facts; preserve the employer's cure-related penalty reductions if the Agency later changes its view.

9. **MODIFIED SECTION 17440(D) –** The Cure Regulations Should Provide Finality and Workable Delivery Rules.

Modified section 17440(d) requires the Agency to review a wage-statement cure even when the claimant files no dispute and to decide whether the cure "appear[s] facially sufficient." That formulation does not state whether a favorable determination finally resolves the cured violation, whether the claimant may later revive the issue, or what happens if the Agency misses its 17-day deadline. The cure mechanism will not encourage prompt correction unless a compliant cure produces defined finality.

The regulations should also account for employees whom the employer cannot reach despite reasonable diligence. RCFE operators frequently have short-service and per-diem former employees. A returned mailing, obsolete email, or expired payroll-portal credential should not defeat an otherwise complete cure when the employer uses the last known contact information, performs a reasonable address update, and preserves the corrected statement for later access.

Requested revision:

- Amend section 17440(d) to require a determination that the employer "has cured" the violation, rather than that the cure merely "appears facially sufficient," when the claimant files no timely dispute and the submission satisfies section 2699(d)(2).
- State that a favorable determination becomes final if the claimant did not timely dispute the cure and bars a PAGA claim based on the cured violation.
- Specify the consequence of Agency inaction by the statutory deadline, including a deemed-complete or employer-review remedy.
- Define reasonable delivery and electronic-access methods and create a safe harbor for returned or undeliverable communications after documented reasonable diligence.
- Clarify that all cure proposals, supporting records, preconference statements, cure plans, completion records, and hearing exhibits remain nonpublic and subject to statutory use restrictions, not merely Evidence Code section 1152.

10. SECTION 17410(A)(1)(C) – The Division 5 Provisions and Appendix H Should Require Exact Title 8 Citations and Accurately Describe the Division's Process.

Section 17410(a)(1)(C) requires a filer to identify the specific Labor Code sections "or regulations" supporting a safety claim. Section 17450(c)(2)(A), however, requests only Labor Code sections, and Appendix H likewise provides only a "Labor Code Section(s)" field. Most operative occupational-safety duties appear in Title 8 regulations. The form should require the exact regulation and subsection, the physical condition, the date, the employee's exposure, and the facility location.

Appendix H also overstates the post-review remedy. It says that if the Division does not cite within six months after the violation, the claimant may challenge "that decision" in superior court. Section 17451(d) permits a civil action only when the Division failed to issue a citation because it failed to commence an inspection or investigation. The form must state that limitation accurately. It should not describe cure opportunities as available for Division 5 violations, which section 2699.5 excludes from cure.

Requested revision:

- Harmonize sections 17410 and 17450 and Appendix H by requiring the exact Title 8 regulation and subsection for every Division 5 claim.
- Require a separate claim entry for each location, condition, date range, and alleged employee exposure; prohibit statewide extrapolation without facility-specific facts.
- Correct Appendix H to match the limited circumstances in section 17451(d) and remove any suggestion that Division 5 violations are curable.
- Require the Division to issue and docket a written closure determination identifying whether it reviewed, inspected, investigated, cited, or declined to cite each alleged violation and the claims and period affected.

11. SECTION 17424(B) – The Reporting and Preclusion Provisions Should Identify Their Exact Scope.

Section 17424(b) provides that when the Labor Commissioner cites or files an action "based on violations alleged" in a notice, the claimant may not file a PAGA action or proceed on "any" PAGA claims in a pending case. The final rule should identify whether preclusion extends only to the cited violation, theory, period, worksite, and employees or to every claim in the notice. Employers need a written determination they can present to the court, and claimants need notice of what remains.

Sections 17410(a)(5)(C) and 17460(a)(4) also require submission of an "order or award entered during arbitration." Quite often, arbitration addresses an individual PAGA claim and other claims while non-individual representative claims remain in court. The rule should require publication only of PAGA claims or a court order confirming, vacating, or disposing of that award. It should not require publication of interim orders, discovery rulings, confidential individual awards, or orders unrelated to PAGA penalties.

Requested revision:

- Require Labor Commissioner citation or prosecution notice to identify each precluded violation, theory, respondent, worksite, employee group, and period and state whether any portion of a pending PAGA action may continue.
- Limit arbitration reporting to a final award that adjudicates a PAGA civil penalty claim and to a court order that confirms, vacates, or disposes of such an award.
- Permit redaction of confidential arbitration material not necessary to identify the PAGA disposition.

We appreciate the opportunity to share our comments based upon member concerns with the Agency in support of our concerns to stop the PAGA abuse. We look forward to your consideration of our comments. Please contact me at mrose@leadingageca.org with any questions.

Sincerely,

Meghan Rose
General Counsel and Chief Government Affairs Officer