TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 9. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

FINAL STATEMENT OF REASONS IN SUPPORT OF REGULATORY ACTION TO:

- **Adopt New Sections 17400, 17401, 17410, 17411, 17412, 17413, 17414, 17415, 17420, 17420.5, 17421, 17422, 17423, 17424, 17430, 17430.5, 17431, 17432, 17433, 17434, 17435, 17436, 17437, 17438, 17439, 17439.5, 17440, 17441, 17442, 17443, 17450, 17450.5, 17451, 17460, 17461, 17462, and 17463.**

FINAL STATEMENT

The Labor and Workforce Development Agency (LWDA or Agency) adopts the above regulatory sections pursuant to the notice of proposed rulemaking issued on February 6, 2026, and published in the California Regulatory Notice Register 2026, Number 6-Z, that same day, as modified pursuant to the notice issued by the Agency on August 3, 2026.

UPDATE TO INITIAL STATEMENT OF REASONS

The Agency issued its notice of proposed rulemaking on February 6, 2026, accompanied by an initial statement of reasons and the express terms of the proposed regulatory text. The Agency received written public comments during the 45-day comment period. A hearing was requested and held on April 9, during which additional oral and written comments were received. On August 3, the Agency issued notice of modifications to the proposed regulations and the addition of documents to the rulemaking file, including an addendum to the initial statement of reasons in support of the proposed rulemaking. The Agency received additional written comments during the ensuing 15-day comment period. The Agency has no updates to its February 6 initial statement of reasons, as supplemented by the addendum issued August 3. The Agency's responses to comments received during the course of this rulemaking process are included below.

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

The Agency has not added any materials or records to its rulemaking file beyond those identified in its February 6, 2026 notice of proposed rulemaking and the August 3 notice of modifications to the proposed regulations and the addition of documents to the rulemaking file.

LOCAL MANDATE DETERMINATION

The regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO PUBLIC COMMENTS

As noted above, the Agency received written public comments during the 45-day comment period following issuance of the February 6, 2026 notice of proposed rulemaking. A hearing was held April 9, during which the Agency received additional oral and written public comments. After issuing notice of modifications and the addition of records to the rulemaking file on August 3, the Agency received additional written public comments during the 15-day comment period that followed. Many commenters generally express support for the adoption of regulations implementing the provisions of the Labor Code Private Attorneys General Act of 2004 (PAGA), Labor Code section 2698 et seq., and appreciation of the Agency's efforts in this regard. The Agency aggregates and responds to relevant and timely comments regarding specific provisions of the regulations, or the procedures followed by the Agency in adopting them, received during the 45-day period (45D), the hearing (H), and 15-day (15D) period, below.

Applicability of the Regulations

Comment Summary No. 1: Provide clarification regarding the effective date and retroactive applicability of the proposed regulations.

Comments Received From: LeadingAge California (LeadingAge) (45D, 15D); SEIU California State Council (SEIU) (45D, 15D); California Business and Industrial Alliance (CABIA) (15D); Cogir Management (Cogir) (15D); Call & Jensen (15D); California Chamber of Commerce (CalChamber) (15D); Blackstone Law (15D); Wilshire Law Firm (15D); Capstone Law (15D)

Response:

See regulation 17400, subdivision (b). Several commenters requested clarification regarding the effective date of the regulations and whether they will apply only to new PAGA cases filed after the regulations become effective or to existing PAGA cases, as well. In response to such comments the Agency modified regulation 17400 to add subdivision (b) addressing this issue. One commenter that had requested such clarification submitted subsequent comments expressing agreement and support for this provision as an appropriate response to prior comments.

Generally, the effective date of the regulations will be determined based on the date they are filed with the Secretary of State. (Gov. Code, § 11343.4.) As provided in regulation 17400, the regulations will apply to all new PAGA notices and cases filed after the regulations become effective, as well as to all existing PAGA cases pending at the time the regulations become effective. The regulations do not create new substantive rights or liabilities but rather establish procedural requirements governing the administrative review and handling of PAGA cases. As a general rule, laws are presumed to operate on a prospective basis only absent an express declaration otherwise. (*Lozano v. Workers' Comp. App. Bd*. (2015) 236 Cal.App.4th 992, 998.) However, that presumption "does not preclude the application of new procedural or evidentiary" rules to case proceedings pending at the time or occurring after such rules take effect, even if the underlying conduct at issue in such case arose before. (*Ibid*.)

Several commenters assert this will lead to disruption or confusion in how certain aspects of the rules may apply in pending cases. For example, some comments ask whether new PAGA notice requirements (see reg. 17420) would apply in pending cases that passed that initial notice stage or already are pending in court. As set forth above, the rules do not purport to apply retrospectively in this manner; PAGA notices filed before the effective date of the regulations will not be subject to new regulatory requirements. The rules will apply in pending cases on a prospective basis only. (*Lozano*, *supra*, 236 Cal.App.4th at pp. 998-999.) The Agency does not find the prospective application of procedural rules in a manner consistent with applicable law will result in disruption in any pending matter.

Comment Summary No. 2: Provide clarification regarding the application of PAGA to app-based drivers.

Comments Received From: Scott Voelz (45D)

Response:

No action taken. This commenter requests the Agency clarify the application of PAGA to app-based drivers. The commenter proposes modifications to the definition of a "claimant" under regulation 17401 to clarify app-based drivers are not considered "aggrieved employees" under PAGA. The commenter additionally proposes modifications to regulation 17420 requiring heightened PAGA notice disclosures and pleading requirements for app-based drivers.

As the commenter recognizes, the employment status of app-based drivers is governed by statute. (Bus. & Prof. Code, § 7448 et seq.) Thus, the Agency deems it unnecessary to separately define the status of app-based drivers in these

regulations. While the commenter asserts independent contractor app-based drivers are inappropriately filing PAGA actions despite the provisions of Business and Professions Code section 7451, various litigation procedures are available to defendants to address such issues if a defendant contends an individual is not an "aggrieved employee" with standing to assert claims under PAGA.

Filing, Service, and Litigation Reporting Requirements

Comment Summary No. 3: Allow a "good faith" exception to excuse instances where a user files a document electronically with the Agency using an incorrect filing link on the online PAGA filing portal.

Comments Received From: California Employment Law Council and Employers Group (Employers Group) (45D); Fisher Phillips (45D)

Response:

No action taken. At least one commenter specifically expressed support for the clearer online filing instructions and guidance provided by the Agency. One commenter asserts the different filing hyperlinks available on the online PAGA filing portal for electronically filing documents with the Agency can be confusing. The commenter suggests the Agency should allow a "good faith" exception to allow a filing that was submitted using an incorrect hyperlink. (See reg. 17410, subd. (a).) As explained by the Agency previously during the course of this rulemaking, use of the correct filing hyperlink is critical to ensuring documents are routed to the proper entity or division for processing and handling. The need to ensure documents are submitted using the correct hyperlink further is essential in light of the short statutory timeframes applicable to the investigation or review of claims. (Lab. Code, § 2699.3, subds. (a)-(c).)

The filing hyperlinks available on the online PAGA filing portal are clearly described, and proposed regulation 17410 provides further guidance regarding use of each link for different types of documents. In addition, the online PAGA filing portal provides email address contact information to reach staff in the Labor Commissioner's Office or the Agency in order to assist individuals who may have questions regarding how to submit certain documents. Accordingly, the Agency declines to adopt the type of exception suggested here.

Comment Summary No. 4: Require service of PAGA notices on an employer's registered agent for service of process.

Comments Received From: Employers Group (45D)

Response:

No action taken. This commenter contends some PAGA notices are mailed to an employer's general address and may be lost or received by an individual unaware how to handle the notice. The commenter speculates such mailing practices may be intentional and designed to prevent an employer from taking appropriate or timely action to respond to the notice, and suggests adopting a requirement PAGA notices be served by certified mail on an employer's registered agent for service of process as listed on the California Secretary of State's Web site (<https://bizfileonline.sos.ca.gov/search/business>).

The Agency finds such a requirement may result in confusion or complications, including for unrepresented employees proceeding in pro per. It is not uncommon for an employer to operate or do business under a name different than the employer's formal corporate name. This could cause confusion in circumstances where an employer does not correctly identify itself on wage statements issued to employees (Lab. Code, § 226, subd. (a)(8)), a common violation alleged in PAGA cases. Moreover, entities operating under fictitious business names may not properly register those names, another issue sometimes encountered in PAGA cases and that creates difficulty identifying the correct legal entity that is the employer. (Cf. Bus. & Prof. Code, § 17900 et seq.) In addition, search results on the Secretary of State Business Search Web page may be confusing as there often are multiple entities bearing similar names. Further, not all employers are organized as entities searchable using the Secretary of State Business Search Web page.

Accordingly, the Agency does not believe a requirement such as that proposed here to be appropriate, including on grounds it may result in confusion or hardships on employees who may not be aware of their employer's formal corporate name (assuming it is a corporation) or who may have difficulty navigating the Secretary of State's Web site. The Agency notes the PAGA notice form prescribed by it under these regulations (see reg. 17420; *Addendum to* Initial Statement of Reasons (ISOR Addend.), App. H) adopts a more formal appearance as compared to the types of letterhead commonly used by attorneys filing PAGA notices currently. This new format should provide clearer notice to the recipient that the PAGA notice is a formal legal document requiring attention.

<u>Comment Summary No. 5</u>: Electronic filing requirements and service of PAGA notice on employer.

<u>Comments Received From</u>: California Rulal Legal Assistance Foundation (CRLA) (45D)

<u>Response</u>:

No action taken. This commenter expresses concerns about electronic filing requirements for PAGA notices, including due to possible difficulties with access to electronic platforms, as well as the requirement an employee serve notices on employers. However, these are statutory requirements that cannot be overridden through regulations. (Lab. Code, §§ 2699, subd. (s)(4), 2699.3, subds. (a)(1)(A), (b)(1), (c)(1)(A).)

Comment Summary No. 6: A plaintiff's failure to comply with applicable litigation reporting requirements should be grounds to support designation as a non-compliant filer.

Comments Received From: CalChamber (45D)

Response:

No action taken. Labor Code section 2699, subdivision (s) requires a PAGA plaintiff to submit certain litigation documents to the Agency within specified periods. Regulations 17410, subdivision (a)(5), and 17460, subdivision (a), implement these statutory requirements with additional instructions regarding the electronic submission of documents using the online PAGA filing portal. This commenter suggests a plaintiff's failure to comply with these litigation reporting requirements should be grounds to support designation of the individual as a non-compliant filer.

The non-compliant filer provisions of regulation 17415 are directed towards abusive PAGA notice filing practices, and the Agency declines here to extend the scope of such provisions more generally. The Agency notes subdivision (b)(3) of regulation 17461 requires a plaintiff seeking approval of a proposed settlement agreement to include with their submission to the Agency a statement confirming the party has complied with applicable litigation reporting requirements or, if not, to explain why. The Agency finds this requirement sufficient to monitor compliance with reporting requirements.

PAGA Notice Requirements

Comment Summary No. 7: Defining the requirement that a PAGA notice describe the "facts and theories" supporting the violations alleged.

Comments Received From: The Santaluz Club (Santaluz) (45D); Holt of California (Holt) (45D); Brickhouse Restaurant & Catering (Brickhouse) (45D); Cal. Fuels + Convenience Alliance (CFCA) (45D); The John Stewart Company (JSC) (45D); GS1 Group (GS1) (45D); California Behavioral Health Association (CBHA) (45D, H); LeadingAge (45D, H); California State Alliance of YMCAs and Non-Profit

Coalition (Non-Profit Coalition) (45D); Asian American Hotel Owners Association (AAHOA) (45D, H); Employers Group (45D); Fisher Phillips (45D); California Retailers Association (Retailers) (45D); California Restaurant Association (CRA) (45D); CalChamber (45D); Consumer Attorneys of California (CAC) (45D); California Employment Lawyers Association (CELA) (45D); SEIU (45D, H); California Rural Legal Assistance Foundation, et al. (CRLA) (45D, H); Bibiyan Law Group (Bibiyan) (45D, H); The Sentinel Firm (Sentinel) (45D); Moon Law Group (Moon) (45D); Blackstone (H); Wilshire (H); Laurel Holmes (H)

Response:

No action taken. Many comments addressed provisions in the proposed regulations describing the required content of a PAGA notice, particularly as it relates to the statutory requirement a PAGA notice state the "facts and theories" supporting the violations alleged. (See Lab. Code, § 2699.3, subd. (a)(1)(A).) Regulation 17420, subdivision (d)(2)(B), in turn, generally states a PAGA notice must include a short and plain statement of the facts and theories supporting an alleged violation. Many commenters expressed support for these provisions, including on grounds the additional guidance provided will deter boilerplate filing practices. Some commenters urge the Agency to adopt heightened pleading requirements, such as increased specificity in describing the bases, frequency, location, or scope of the violations alleged; requiring specific proof of violations; or additional specification requirements applicable to defining the group of aggrieved employees sought to be represented. On the other hand, some commenters suggest the regulation is inconsistent, or possibly inconsistent, with the statutory requirement a PAGA notice include a statement of the "facts and theories" supporting an alleged violation or that clarification of the statutory standard is needed.

As relevant here, regulation 17420, subdivision (d)(2)(B) requires a PAGA notice include:

> A short and plain statement of the facts and theories supporting each violation alleged and personally suffered by the claimant. 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.

The regulation is consistent with current statutory requirements and case law, while providing additional guidance in defining the "facts and theories" that must be included to support an alleged violation. Existing law requires a PAGA

notice "be specific enough" to permit the Agency to "intelligently assess" the nature and seriousness of the violations alleged while at the same time providing an employer sufficient information to allow the employer to understand and respond to the allegations. (*Ibarra v. Chuy & Sons Labor, Inc*. (2024) 102 Cal.App.5th 874, 881-882; *Brown v. Ralph's Grocery Co*. (2018) 28 Cal.App.5th 824, 837; *Gunther v. Alaska Airlines, Inc*. (2021) 72 Cal.App.5th 334, 351.) "Bare" or conclusory allegations of Labor Code violations are insufficient to satisfy this requirement. (*Ibarra*, *supra*, 102 Cal.App.5th at p. 881; *Uribe v. Crown Building Maintenance Co*. (2021) 70 Cal.App.5th 986, 1004.)

The regulation reiterates these basic principles while providing guidance to parties in terms of properly articulating the facts and theories supporting an alleged Labor Code violation. Such guidance is necessary because current PAGA notice filing practices often frustrate the role of the Agency under the statute. Template-driven filing practices and the repetition of alleged violations in boilerplate or conclusory form, often across a large volume of filings, implicate serious concerns regarding the veracity or accuracy of the violations alleged or a claimant's standing to assert them; defeat the purpose of the statutory prelitigation notice requirement; and impede the Agency's role under the statutory scheme. One commenter takes issue with the Agency's prior characterization of some attorneys "exploiting" the minimal notice requirements described by courts before the 2024 legislative reforms. The Agency has acknowledged the pleading standard attendant to PAGA notices is not a weighty or burdensome one, as the courts have found, but the Agency also rejects the commenter's implicit suggestion that the standard applied by courts previously constitutes blanket judicial approval of the template-driven and boilerplate PAGA notice filing practices described by the Agency.

On the other hand, the Agency also finds no support for the suggestions of other commenters seeking to impose heightened pleading requirements as described above. The statute does not contemplate requiring the level of specificity or proof urged by these commenters, particularly in a prelitigation notice before any investigation or discovery has been conducted.

Certain commenters also assert the requirement a PAGA notice include a "short and plain statement of the facts and theories" supporting an alleged violation is vague and confusing, or that it imposes a difficult threshold to meet and will create a chilling effect on new PAGA notice filings. (See also Response to Comment Summary No. 23.) The Agency finds such contentions unpersuasive and lacking in merit. A requirement a document include a "short and plain statement" of the underlying facts or bases supporting the assertions set forth is not a novel or newly established standard, and the Agency notes other provisions of law adopt similar requirements. (See, e.g., Bus. & Prof. Code, § 22757.13, subd. (a)(3); Civ. Code, § 1788.58, subd. (a)(2); Health & Saf. Code, §

112265, subd. (b)(4); Pub. Resources Code, § 6224.4, subd. (a)(4); Cal. Code Regs., tit. 22, §§ 66271.53, subd. (c)(4), 69507.2, subd. (c)(1), 69507.6, subd. (b)(2).) To the extent these same commenters also assert the statutory "facts and theories" requirement is vague or ambiguous, the Agency notes such perceived ambiguity further supports the need for regulatory guidance prescribing the contents of a PAGA notice.

Accordingly, subdivision (d)(2)(B) of regulation 17420 includes appropriate guidance to parties in terms of properly describing the facts and theories supporting the violations alleged in a PAGA notice in a manner consistent with the statute while furthering the purpose of the notice requirement and aiding the Agency in carrying out its role under the statute.

Comment Summary No. 8: Allegations of health and safety violations in PAGA notices.

Comments Received From: CRLA (45D); CABIA (15D); LeadingAge (15D); CalChamber (15D)

Response:

No action taken. Several commenters propose suggestions or express concerns regarding allegations of health and safety violations in PAGA notices, including that the Agency should require specification of applicable regulations violated; require specification of the dates and locations of alleged violations; and specify that health and safety violations are not subject to cure procedures.

Regarding specification of alleged regulatory provisions, the statute requires specification of the sections within Division 5 of the Labor Code (commencing with section 6300) allegedly violated. (See Lab. Code, § 2699.3, subd. (b)(1).) While many specific theories of violation may be based on applicable regulatory provisions, the Agency notes many PAGA notices alleging health and safety violations do identify the regulatory provisions alleged to have been violated. Such specification is consistent with the requirement a PAGA notice articulate the theories supporting the alleged Labor Code violation. Both the new PAGA notice form prescribed by the Agency and regulation 17410, subdivision (a)(1)(C) also provide the opportunity for claimants to identify regulatory sections allegedly violated.

Regarding identification of the dates and locations of alleged violations, the regulation already requires such information be included in a PAGA notice. (Reg. 17450, subds. (c)(1)(E), (c)(2)(B).) As explained previously in support of these provisions, this information is required to enable Cal/OSHA to identify whether the alleged violations timely are asserted and the location of the

violation for purposes of conducting an inspection or investigation. The Agency finds it unnecessary to require separate claims be submitted for each date or location of an alleged violation, or that such information be separately entered during the online submission process.

One commenter expressed concerns regarding difficulties employees in the agricultural industry, particularly farmworkers, may have identifying specific addresses or locations. The Agency is cognizant of these issues and sensitive to such concerns, and notes the regulation allows for identification of the "location" of alleged violations where a specific address may not be available or readily known. (See reg. 17420, subd. (d)(1)(C); reg. 17450, subd. (c)(1)(E).) As the commenter described, this could involve identification of the closest intersection or a field designation to aid in identifying the location where the violation allegedly occurred or exists for purposes of conducting an inspection or investigation.

Finally, the Agency also deems it unnecessary to separately specify health and safety violations are not subject to cure procedures. The provisions of regulation 17451, subdivision (d) already describe applicable procedures where the provisions of section 2699.3, subdivision (c) may be implicated by any failure by Cal/OSHA to inspect or investigate alleged violations (see Lab. Code, § 2699.3, subd. (b)(2)(B)), and the Agency explained previously during this rulemaking that such provisions are designed to clarify the non-applicability of cure procedures to health and safety violations. The Agency further notes the informational language to be included in the PAGA notice form prescribed by the Agency does not provide for cure opportunities when describing the investigatory procedures applicable to alleged health and safety violations. (See ISOR Addend., App. H.)

Comment Summary No. 9: Specification of the Labor Code sections or regulations providing for the civil penalties to be recovered.

Comments Received From: CRA (45D); CalChamber (45D); CELA (45D); LeadingAge (15D)

Response:

See modifications to regulation 17420, subdivision (d)(2), and 17450, subdivision (c)(2), removing subparagraph (C) in each. One commenter expressed concern regarding a provision from the originally proposed regulatory language that would have required a person filing a PAGA notice to specify the statute(s) providing the civil penalties to be recovered. This is because there may be multiple statutory bases or the applicability of certain statutes may be subject to interpretation. Moreover, identification of the statutes providing the specific civil

penalties sought may be complicated or difficult for an employee proceeding in pro per.

The Agency removed the subject provision when it issued modifications to the proposed regulations. (Regs. 17420, 17450.) One commenter objects to removal of this provision and urges the Agency to include a requirement a PAGA notice specify the statutes authorizing the penalties to be recovered. Other commenters previously requested the Agency also require a claimant to specify regulatory sections providing civil penalties for alleged health and safety violations. On review, the Agency finds this information is not necessary to apprise it and the employer of the nature of the violations alleged and the bases for them, or to otherwise fulfill the purpose and intent of the statute's prelitigation notice requirement.

Comment Summary No. 10: Require all PAGA notices be verified by the employee, signed under penalty of perjury, or accompanied by an attorney declaration.

Comments Received From: LeadingAge (45D, H); Non-Profit Coalition (45D); AAHOA (45D, H); CRA (45D); CalChamber (45D)

Response:

No action taken. Several commenters request the Agency adopt an additional requirement all PAGA notices be verified by the employee, signed under penalty of perjury, accompanied by an attorney declaration, or otherwise endorsed by all firms or counsel handling a matter. As a general matter, lawsuits alleging labor or employment claims are not subject to verification requirements. The Agency does not find it appropriate to impose such requirements on a prelitigation notice of this nature, including on grounds employees lack access to many employer records or other evidence at this stage. In this regard, proper articulation of the information required under subdivision (d) of regulation 17420, accompanied by the certification required under subdivision (f), is sufficient to provide proper notice of the claims at issue and sufficient assurance that they are not alleged for any improper purpose or without basis. (See also reg. 17450, subds. (c), (e) [corresponding provisions relating to PAGA notices alleging health and safety violations].)

Comment Summary No. 11: Regarding the proposed PAGA notice form to be required by the Agency.

Comments Received From: Employers Group (45D); CRLA (45D, H); Bibiyan (45D); Wilshire (45D); Buena Vista Business Services (15D); MB Holdings (15D); CABIA (15D); LeadingAge (15D); CalChamber (15D)

Response:

No action taken. The provisions of regulations 17420 and 17450 describe the required content of PAGA notices. One commenter requested the Agency make available for review an example of the PAGA notice form it intends to adopt to further assist the public in seeing what the form may look like. (See regs. 17420, subd. (a)(1), 17450, subd. (a)(1).) The Agency included a proposed PAGA notice form when it issued notice of modifications to the regulations and addition of documents to the rulemaking record. (ISOR Addend., App. H.) Several commenters have proposed suggestions or additional information to be required in the form.

Certain commenters ask the Agency to adopt additional fields to capture different types of employment background information, or for alleged violations when a PAGA notice is filed by a non-profit organization meeting the requirements of Labor Code section 2699, subdivision (c)(2). The Agency finds it unnecessary to adopt these suggestions. The regulations appropriately define the information to be provided in a PAGA notice in terms of the employee's employment background (reg. 17420, subd. (d)(1)(A)-(E)), and the Agency finds it immaterial whether such information is included in a paragraph format as opposed to conveyed in separate fields in a form. (See also reg. 17450, subd. (c)(1)(A)-(E).) Similarly, the regulations describe the applicable requirements when a notice is filed by a nonprofit organization and the violations are being alleged on a non-personal, representative basis only. (Regs. 17420, subd. (d)(2)(B), 17450, subd. (c)(2)(B).) Again, the Agency does not find separate fields in a PAGA notice form to be necessary, and compliance with applicable requirements as set forth in the regulations in terms of proper articulation of the violations alleged will provide sufficient notice of the claims.

Other commenters request the Agency require the contact information of the individual attorney filing the PAGA notice be provided in the PAGA notice form or that all firms with an interest in the filing (for example, where a matter was referred from one firm to another in exchange for a fee) be identified. The regulations and proposed PAGA notice form require an attorney filing a PAGA notice to provide their direct contact information. (Regs. 17420, subd. (a)(2), 17450, subd. (a)(2); ISOR Addend., App. H.) The Agency finds this sufficient for purposes of identifying the individual responsible and accountable for the matter at issue.

Another commenter asks that the PAGA notice form include language providing instructions regarding the requirements or limitations applicable to efforts to settle PAGA claims. The Agency finds it unnecessary to add such language to the PAGA notice form. The Agency notes regulation 17462 provides

guidance regarding Agency or court oversight requirements for resolving claims under PAGA, while Labor Code section 2699, subdivision (s)(1) and regulation 17461 describe the procedures applicable to obtaining approval of a PAGA settlement in court.

Finally, certain commenters suggest the PAGA notice requirements adopted by the Agency in regulations 17420 and 17450, as reflected in the PAGA notice form to be prescribed by the Agency, render moot separate concerns expressed by the Agency regarding template-driven filing practices by some plaintiff attorneys, including specifically as it relates to the designation of attorneys or individuals as non-compliant filers. The Agency disagrees. While the PAGA notice form is designed as one measure towards addressing abusive filing practices by some attorneys and to improve the manner in which administrative notice of alleged Labor Code violations is provided, separate safeguards remain appropriate and necessary to ensure these regulatory requirements are not subject to the types of abuses that have occurred under the statute.

Comment Summary No. 12: Compliance with administrative notice and exhaustion requirements for PAGA claims before a civil action may be filed or claims released in a proposed settlement.

Comments Received From: SEIU (45D)

Response:

No action taken. Regulations 17420, subdivision (g), and 17450, subdivision (f), state the general rule that no violation may be alleged in any civil action as supporting a claim under PAGA or released in any settlement of claims under PAGA unless the violation first has been alleged in a PAGA notice or amended PAGA notice and compliance with applicable administrative requirements exhausted.

One commenter expressed concern with this provision as contrary to rules deeming variances between pleading and proof to be immaterial absent some showing of prejudice or otherwise allowing the amendment of pleadings to conform to proof or evidence developed during the course of litigation. (See Code Civ. Proc., § 469.) The regulatory provisions here are consistent with general administrative exhaustion principles, as well as statutory requirements under PAGA that an aggrieved employee seeking to collect civil penalties for alleged Labor Code violations on behalf of the state first must provide notice of such violations to the Agency before they may proceed with a PAGA lawsuit on such claims. (Lab. Code, §§ 2699, subd. (a), 2699.3, subds. (a)(1)(A), (b)(1), (c)(1)(A); *LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1193-1194.)

Comment Summary No. 13: The Agency's authority to determine the insufficiency of a PAGA notice.

Comments Received From: LeadingAge (45D, H, 15D); Employers Group (45D); Retailers (45D); CRA (45D); CalChamber (45D); CELA (45D); SEIU (45D, 15D); Health and Fitness Association (H); Alsco-Geyer Irrigation (15D); Blackstone (15D); Jeffrey D. Klein (Klein) (15D)

Response:

See modified regulation 17420, subdivision (h). Several commenters, including stakeholders representing employees, suggested during the initial 45-day comment period that the Agency adopt a specific provision in the regulations codifying the Agency's authority, consistent with practice, to inform individuals in situations where a PAGA notice is insufficient and requires amendment. The Agency adopted such a provision in subdivision (h) of regulation 17420. As modified, the regulation codifies existing Agency practice of informing individuals of deficiencies in a PAGA notice, including describing the manner in which the PAGA notice is deficient and specifying a period in which the filer may amend the notice.

The Agency has received widespread support from stakeholders representing both employees and employers regarding its practice of informing filers of deficiencies in their PAGA notices. Some comments urge the Agency to go further than the regulation provides, such as imposing sanctions or specifying that PAGA notices may be subject to pleading challenges in any subsequent civil action, or to provide a mechanism by which PAGA claims may be dismissed. The Agency declines to adopt such provisions.

First, the statute does not provide for "dismissal" of PAGA claims by the Agency for failure to include sufficient information, including in situations involving overlapping claims against a single employer. Rather, upon proper administrative notice of claims by an employee under PAGA, the Agency generally lacks authority to preclude or prevent a subsequent civil action by the employee unless the Agency cites or prosecutes the employer directly. (Lab. Code, § 2699, subds. (a), (*l*).) These commenters also misunderstand the purpose of an Agency notice concerning deficiencies in a PAGA notice. The purpose of such notice is to aid or assist the person or attorney filing the PAGA notice in providing proper notice and articulation of the alleged violations consistent with applicable statutory and regulatory requirements; not the outright dismissal of cases. Second, the Agency finds sanctions or any express statement a PAGA notice may be subject to a pleading challenge in court to be unnecessary. Again, the Agency's primary concern in this regard is ensuring proper notice

and articulation of alleged Labor Code violations both to the Agency and the employer. Regulation 17415 separately provides measures to address repeated instances of noncompliance with applicable requirements. The Agency finds other sanctions to be unwarranted and unnecessary in the context of seeking to correct deficient PAGA notices.

One commenter suggests the Agency adopt a mandatory obligation to reject deficient PAGA notices, noting the regulatory language states the Agency "may" provide notice that a PAGA notice is deficient. The Agency declines to do so. Given the volume of PAGA notice filings, the Agency may not possess the capacity to review every PAGA notice filed with it. The regulation appropriately allows the Agency to exercise its authority where it identifies or becomes aware of filing issues, while avoiding conclusive determinations regarding the sufficiency of a PAGA notice in circumstances where the Agency is unable to appropriately conduct such review.

One commenter asserts the regulation is vague because it does not define the time in which the Agency may issue a notice of deficiency. However, the statute prescribes the periods available for the administrative review of PAGA notices. (Lab. Code, § 2699.3, subds. (a)(2), (c)(1)(D)-(E).)

One commenter requests clarity regarding the periods available to an employer to respond to a PAGA notice or cure alleged violations in circumstances where the Agency finds a PAGA notice is deficient, including providing notice to the employer of such facts. Agency practice already includes providing notice to employers where PAGA notices against them are deemed insufficient by the Agency. Case-related communications generally are provided to both a claimant and respondent, or their respective counsel, including for purposes of ensuring both parties are aware of developments concerning the case and applicable requirements. Any opportunity to respond to a PAGA notice or to cure alleged violations runs from the postmark date, or employer's receipt, of a notice in compliance with applicable statutory and regulatory requirements. (See, e.g., Lab. Code, §§ 2699.3, subd. (c)(2)(A) [small employer cure proposal to be submitted within 33 days after employer receives PAGA notice], subd. (c)(3)(A) [employer cure notice of alleged violation of Labor Code section 226 to be filed within 33 days of postmark date of PAGA notice].)

Finally, certain commenters argue the Agency lacks authority to determine whether a PAGA notice is sufficient. The Agency disagrees. PAGA's administrative notice requirement is intended, in part, to ensure the Agency is apprised of the violations alleged with sufficient information to allow it to assess the nature or seriousness of the claims. Courts have described the statute's administrative notice obligation as an administrative exhaustion requirement. The Agency has broad authority under the statute to adopt rules designed to

ensure compliance with, and satisfaction of, these administrative requirements. (See Response to Comment Summary No. 15.)

Comment Summary No. 14: Whether allegations in an amended PAGA notice filed in response to an Agency notice finding the initial PAGA notice deficient "relate-back" to the filing date of the original PAGA notice.

Comments Received From: SEIU (45D, 15D)

Response:

No action taken. In circumstances where the Agency finds a PAGA notice insufficient and provides the claimant an opportunity to amend, one commenter seeks clarification regarding whether the amended PAGA notice will relate back to the filing date of the original PAGA notice. As a general matter, the Agency does not deem it appropriate to adopt rules attempting to define circumstances where violations alleged in an amended PAGA notice may relate back to an earlier filing. (See Response to Comment Summary No. 33.) Nor does the Agency find it necessary to do so in the specific circumstances described here where amendment is at the Agency's direction based on identified deficiencies in a PAGA notice. By way of analogy, a cause of action alleged in a lawsuit that otherwise is timely will not be found untimely if a demurrer to the complaint is sustained with leave to amend and further articulation of the cause of action is required in an amended complaint. Similarly here, violations alleged in a PAGA notice that otherwise are timely alleged will not later be deemed untimely in the event the Agency determines the original notice insufficient and allows the claimant an opportunity to amend to provide additional information.

PAGA Notice Filing Practices and Abuses (Reg. 17415)

Comment Summary No. 15: The Agency's authority to adopt regulation 17415 or rules governing abusive conduct or filing practices before the Agency.

Comments Received From: Santaluz (45D); Holt (45D); Brickhouse (45D); CFCA (45D); Jodi Cain (45D); Jodi Webber (45D); GS1 (45D); Simantob (45D); Housing Contractors of America (HCA) (45D); CABIA (45D); CBHA (45D); Leading Age (45D); Non-Profit Coalition (45D); AAHOA (45D); Employers Group (45D); Fisher Phillips (45D); Retailers (45D); CRA (45D); CalChamber (45D, H); CAC (45D); CELA (45D, H); SEIU (45D); Jeffrey D. Klein (Klein) (45D); The Sentinel Firm (45D, 15D); Wilshire (45D); Moon (45D); Torrance Area Chamber of Commerce (H); Civil Justice Association of California (CJAC) (H); Delicato Vineyards, LLC (H); California Wine Institute (H); Laurel Holmes (H); Blackstone (H); James Correa (15D); Buena Vista Business Services (15D); MB Holdings (15D)

Response:

No action taken. Comments received by the Agency generally express widespread support for the adoption of rules addressing abusive filing practices identified by the Agency, including from stakeholders representing the interests of both employers and employees. Many commenters expressing support for this regulation assert it does not go far enough and urge the Agency to adopt stricter and more consequential rules. Some commenters expressing support for the Agency's authority to adopt rules governing the conduct of attorneys and parties invoking its authority under the law or appearing before it have offered suggested modifications. (The Agency responds to such other proposals and suggested modifications separately in the responses that follow.) Other commenters, primarily consisting of law firms or attorneys with law firms who likely may be impacted by the provisions of this regulation particularly as it relates to high-frequency filing practices (see PAGA Case Search Web site, at <https://cadir.my.salesforce-sites.com/PagaSearch>), assert the Agency has no authority to adopt regulation 17415 or any rules governing abusive conduct by attorneys or law firms. (These commenters also assert various other objections to particular provisions of regulation 17415, which are addressed in the following responses.)

This regulation codifies the important public policies underlying PAGA. (Reg. 17415, subd. (a)(1). No commenter objects to or disputes these policies as articulated. The regulation further describes how the conduct of some attorneys undermine, frustrate, or are otherwise inconsistent with public policy and the intent and purpose of the statute. (Reg. 17415, subd. (a)(2).)

Labor Code section 2699, subdivision (u) states the Agency "may promulgate regulations to implement the provisions of [PAGA]." (See Gov. Code, § 11342.600 [defining "regulation" to mean "every rule, regulation, order, or standard of general application . . . adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure"].) In this context, the term "to implement" is synonymous with "administer" or "to carry out." (*Assoc. of Cal. Ins. Companies v. Jones* (2017) 2 Cal.5th 376, 391.) Subdivision (u) reflects a broad grant of rulemaking authority to the Agency by the Legislature, providing the Agency with authority to adopt policy decisions related to the interpretation and administration of PAGA's statutory provisions in order to implement and effectively carry out the law. (*Id*. at pp. 392-393.)

Based on the type of conduct and filing practices observed by the Agency and described in the rulemaking record, the Agency has determined additional safeguards and protections are necessary to fulfill the purpose of PAGA's

prelitigation notice requirements, ensure the effectiveness of the Agency's role and the administrative processes available under the statute, and better fulfill the intent and purpose of the law as a public enforcement tool. (See Notice of Proposed Rulemaking (NOPR), Feb. 6, 2026, pp. 9-10; ISOR, Feb. 6, 2026, pp. 3-8, 18, 25-26, Apps. C-D; ISOR Addend., p. 3, Apps. I-N.) The Agency's authority to adopt rules implementing the provisions of the statute includes the authority to prescribe measures necessary to address conduct detrimental to the proper functioning of the law and the administrative processes it provides. Other agencies have adopted regulations governing the conduct of attorneys or parties to proceedings over which the agency presides or imposing consequences for conduct interfering with the proper functioning of those processes. (See, e.g., Cal. Code of Regs., tit. 8, §§ 10430, 17247, 20238, subd. (b), 20800, § 32220; *id*., tit. 20, § 1.8, subd. (f).)

Commenters objecting to the Agency's authority to adopt this regulation, including the high-frequency and non-compliant filer provisions of the regulation, assert (1) the Agency's role under the statute is limited to conducting investigations and the rulemaking record does not show the filing practices described by the Agency have frustrated this role; (2) adopting rules governing the filing practices of attorneys "usurps" the role of the courts; (3) application of vexatious litigant rules to attorneys is not permitted; and (4) such rules constitute an impermissible regulation of the practice of law. The Agency finds no merit in these objections.

First, the Agency's role under the statute is not limited to investigating alleged violations. The Agency additionally administers early dispute resolution procedures applicable to the most common types of violations alleged in PAGA notices. (Lab. Code, § 2699.3, subd. (c)(2), (3).) That said, the Agency finds the safeguards and deterrents provided in regulation 17415 will aid the Agency's role in reviewing PAGA notices, including for the purpose of potential investigations, by ensuring proper articulation of the violations alleged to enable the Agency to better assess the nature and seriousness of such allegations in any given case (as opposed to reviewing high volumes of generally indistinguishable boilerplate notices). The Agency further finds this regulation will aid the Agency in its role administering early resolution procedures, including for the reasons set forth by the Agency previously during this rulemaking process. (See also Response to Comment Summary No. 19.)

Next, the Agency has authority to adopt such rules governing the conduct of attorneys seeking to invoke the Agency's authority under the statute, including the manner by which they purport to do so. (See Lab. Code, § 2699, subd. (a); see also *Turrieta*, *supra*, 16 Cal.5th at pp. 681-682.) Abusive filing practices by attorneys, as observed by the Agency and as described in this rulemaking record, warrant appropriate safeguards to address and deter such conduct

and to ensure such actors appropriately intend to represent the interests of both the state and the allegedly aggrieved workers. As noted, other administrative agencies have adopted rules governing the conduct of attorneys and parties in their proceedings. Here, aspects of the non-compliant filer provisions of regulation 17415 are analogous in some respects to vexatious litigant provisions set forth in statute or regulation. (See Code Civ. Proc., § 391 et seq.; Cal. Code Regs., tit. 8, § 10430.) The Agency is not prohibited from adopting similar rules applicable to the conduct of attorneys who invoke its authority under the statute or appear before it, nor do the objectors cite any authority that an administrative agency may not adopt rules addressing the conduct of attorneys who repeatedly file non-compliant documents.

Finally, nothing in regulation 17415 purports to "usurp" the role of the courts as it relates to litigation under PAGA or constitutes an impermissible attempt to regulate the practice of law. Courts certainly have authority over the conduct of attorneys and parties appearing before them. However, the Agency is in no way interfering with, let alone usurping, that authority by regulating the conduct of attorneys in the context of prelitigation administrative notice requirements before any lawsuit under PAGA may be filed. Nor does adopting rules governing the conduct of attorneys appearing before the Agency constitute an impermissible attempt to more generally regulate the practice of law. The regulation is limited to addressing the conduct of attorneys as it relates to prelitigation notice requirements under the statute.

Comment Summary No. 16: The thresholds for designation of attorneys or law firms as high-frequency filers.

Comments Received From: Brickhouse (45D); CFCA (45D); JSC (45D); Simantob (45D); CBHA (45D, 15D); LeadingAge (45D); Non-Profit Coalition (45D, 15D); AAHOA (45D, H); Employers Group (45D, 15D); Retailers (45D); CalChamber (45D, H); CAC (45D); CELA (45D); SEIU (45D); CRLA (45D); Yoon Law (45D); Bibiyan (45D, H, 15D); D.Law (45D); Blackstone (45D, H, 15D); Klein (45D, 15D); Lavi & Ebrahimian (45D, 15D); The Sentinel Firm (45D, 15D); Wilshire (45D, H, 15D); Moon (45D, 15D); Torrance Area Chamber of Commerce (H); CABIA (15D); James Correa (15D); Alsco-Geyer Irrigation (15D)

Response:

See modifications to regulation 17415, subdivision (b)(1)(A). Many commenters addressed the thresholds defined in subdivision (b)(1)(A) of regulation 17415 for designation of attorneys or law firms as high-frequency filers. As originally proposed, a high-frequency filer designation would apply to any attorney or law firm that filed 200 or more PAGA notices within a 12-month period. In response to comments asserting it was unfair to apply the same filing threshold to both

individual attorneys and law firms, the Agency modified the regulation to lower the threshold for individual attorneys from 200 to 100.

Many commenters express support for the high-frequency filer provisions of the regulation, including that the thresholds established by the Agency are supported by the rulemaking record and are appropriately tailored to address the conduct of those actors most responsible for the behaviors and practices the Agency is addressing. Among those supporting these provisions, many commenters urge the Agency to adopt far lower thresholds (e.g., 25 notices for attorneys and 50 notices for law firms, or thresholds as low as 10 notices per year) and assert such lower thresholds are warranted to deter abusive filing practices while taking into account realistic workloads for attorneys or firms managing dockets of such sizes. Certain other commenters object to the high-frequency filer thresholds as arbitrary or unfair to law firms. (Cf. Response to Comment Summary No. 15.)

One commenter argues the Agency is ignoring various reasons why PAGA notice filings appear to be increasing, including developments in case law regarding arbitration or that many notices are the product of employees referring co-workers to the same law firm to file additional PAGA notices against their same employer. While there may be various reasons for the increase in PAGA notice filings, this does not explain or justify the conduct observed by the Agency and addressed by this regulation, namely the filing of boilerplate PAGA notices by certain actors on a mass produced scale. Nor do the Agency's observations or publicly available data support a contention that increased PAGA notice filings in recent years are attributable to co-worker referrals seeking to pursue separate actions against a single employer. Regarding the notion of a single law firm filing multiple actions against a single employer, the Agency notes a recently issued published opinion involving a law firm that filed overlapping PAGA lawsuits against a single employer months apart in two different venues but that did not recall filing the initial lawsuit when asked why it filed the later action. (*Quinteros v. Harbor Distributing, LLC* (2026) 121 Cal.App.5th 60, 68, 74.) This case illustrates a dire consequence of high-volume filing practices without concern for reasonable due diligence investigating or filing actions or an attorney's case-management responsibilities, among other things.

Many commenters objecting to these provisions argue it is unfair or arbitrary to subject law firms that file 200 or more PAGA notices over a 12-month period to designation as a high-frequency filer while a firm that files 199 notices would not be. The adoption of a numeric threshold for purposes of determining the applicability of certain requirements is not a novel one. Existing law addressing similar behaviors as those described by the Agency here similarly uses numeric filing thresholds for determining whether an individual is deemed a "high-

frequency litigant" for purposes of triggering heightened pleading requirements and additional safeguards in construction-related accessibility cases. (Code Civ. Proc., § 425.55, subd. (b).) To the extent these objectors also assert attorneys who file less PAGA notices also engage in abusive practices, the Agency notes other provisions of regulation 17415 regarding non-compliant filers may be applicable in such circumstances to address identified issues.

The Agency has determined the designation thresholds set forth in subdivision (b)(1)(A) of regulation 17415 represent a measured and appropriately tailored approach towards addressing abusive or problematic filing practices of the attorneys and law firms most responsible for or prone to such conduct while avoiding overreach. Data from both Fiscal Year (FY) 2024/2025 and FY 2025/2026 as included in the rulemaking record demonstrate the modest and narrowly tailored reach of these provisions. Yet, as the data illustrates, this small group of actors to whom these provisions would apply are responsible for producing a disproportionately large number of all PAGA notices filed during the relevant periods.

The Agency has observed propensities by some attorneys and firms to rely heavily on boilerplate PAGA notices. (See Response to Comment Summary No. 7.) As noted in the rulemaking record, the Agency also has observed attorneys within law firms using the same or similar templates. Thus, within a single law firm these issues generally are not isolated to a single actor but rather may reflect a broader, firm-wide approach to PAGA notice filings. These boilerplate, template-driven practices facilitate the large volume of filings these actors are producing.

As noted above, the Agency received comments asserting the original proposal unfairly subjected individual attorneys and law firms to the same filing threshold for designation. On review, the Agency concurred and modified the regulation to establish different filing thresholds for individual attorneys and law firms. After these modifications, several commenters contend the threshold remains unfair to law firms and proffer hypothetical scenarios, for example, where a law firm with 40 attorneys may be subject to designation as a high-frequency filer if each attorney filed only five notices. But these hypotheticals do not accurately reflect actual filing practices as shown in publicly accessible search tools and as observed by the Agency. Moreover, they ignore the underlying concerns described by the Agency.

The Agency has observed, and publicly available search tools show (PAGA Case Search Web site, at <https://cadir.my.salesforce-sites.com/PagaSearch>), that PAGA notice filing activity within the most prolific law firms generally is concentrated in a small group of attorneys. In some cases only a single attorney or two is responsible for producing virtually all or a large majority of the PAGA

notices attributable to a particular firm. To illustrate, during FY 2024/2025 the 12 individual attorneys who would meet the 100-filing threshold for designation as high-frequency filers represent six of the eight law firms that would meet the 200-filing designation threshold applicable to law firms for that period.

Several objecting commenters assert larger law firms have more resources and thus are able to file more PAGA notices. These commenters also assert employees will be discouraged from selecting a larger firm to represent them, thereby depriving employees of more experienced and capable legal representation. Several commenters suggest the Agency should consider the size of a law firm for purposes of establishing a designation threshold applicable to law firms. Another proposal offered involved removing law firms entirely from the high-frequency filer designation.

The size of a law firm is not a reflection or indicia of competency. Nor does the allegation that larger firms have more resources relate to or justify the underlying conduct addressed by this regulation: the high-volume production of boilerplate, template-driven PAGA notices. And, as noted above, filing practices within firms potentially subject to high-frequency filing designations typically are concentrated among a handful of attorneys. The Agency declines to establish criteria factoring law firm size into the high-frequency filer framework. This type of scrutiny may amount to the Agency exercising oversight of the composition of these firms in a manner that some commenters objecting to this regulation contend would constitute an unauthorized attempt to more generally regulate the practice of law. Moreover, many of these law firms have diversified practices, including, for example, separate personal injury or consumer protection practices. Even firms advertising practice in the field of labor and employment law list an extensive array of practice areas within this broader field. Litigation of wage and hour cases, particularly in class or PAGA representative actions, often requires specialized knowledge an attorney practicing other areas of labor and employment law may not readily possess. Ultimately, the Agency declines to adopt such a rubric based on information the Agency may not readily possess, may be subject to fluctuation or unpredictability based on changing or evolving variables, or that would require it monitor law firm business models, attorney headcounts, and more broadly these firms' general legal practices.

Several commenters assert data provided by the Agency does not support the filing thresholds established by the regulation. These commenters note that law firms filing less notices than would trigger a high-frequency filer designation also fail in many cases to report filing PAGA complaints with the Agency as statutorily required. (Lab. Code, § 2699, subd. (s)(1).) Unfortunately, data produced by the Agency shows the problem of attorneys failing to report PAGA lawsuits is a generally pervasive one. But in relying solely on complaint-to-notice percentage

statistics in isolated instances, these commenters fail to acknowledge other relevant concerns.

At the outset, this conduct (reporting PAGA lawsuits to the Agency) represents only a component of the larger issue addressed by this regulation concerning the boilerplate, template-driven PAGA notice filing practices of the attorneys and law firms producing the highest volumes of PAGA notices. Notably, no commenter defends the propriety of the types of filing practices described by the Agency and illustrated in the record. Next, by focusing on certain complaint-to-notice percentages alone these commenters fail to appreciate the magnitude and scale of the issue as it relates to the firms with the highest PAGA notice filing totals as compared to firms with far lower filings. As relevant here, the Agency additionally notes that several law firms under the 200-filing threshold and with low complaint-to-notice ratios appear to be smaller firms that likely still would be subject to high-frequency filer requirements based on the responsible attorney within the firm exceeding the 100-filing threshold applicable to individuals. And finally, as described in the rulemaking record, law firms among those with the highest PAGA notice filing totals often inform the Agency after filing a complaint that they subsequently withdrew or dismissed the PAGA claims without pursuing them.

One commenter argues there are a number of reasons why a law firm may not report filing PAGA lawsuits to the Agency, including that the firm simply is failing to do so or because another PAGA case involving the same employer may affect their ability to proceed. However, this latter contention suggests a lack of diligence by the filing attorney in investigating other PAGA claims involving the same employer, even if true. PAGA complaints, proposed settlements, and court orders are publicly accessible using the PAGA Case Search Web site. Also, when filing a new PAGA notice the submission form on the online PAGA filing portal asks the filer if they "have searched LWDA's database for other PAGA claims filed against the employer(s) named" in the PAGA notice they are filing. Regarding the former contention, the Agency is entitled to presume attorneys filing PAGA lawsuits will comply with their statutory obligation to submit copies of the complaints to the Agency, and that their failure to do so suggests no such lawsuit was filed. (Lab. Code, § 2699, subd. (s)(1); Civ. Code, § 3548.)

The Agency also declines to remove law firms from the high-frequency filer framework for the reasons described above and more fully in the rulemaking record. To do so would provide an avenue for attorneys to evade scrutiny and appropriate notice safeguards by allowing law firms to diversify filings amongst its attorneys to avoid any single attorney from reaching the required threshold—and the Agency has observed examples of modified filing practices in certain firms that appear designed towards these ends. Another suggestion received by the Agency proposed allowing a law firm that otherwise would meet the criteria

for designation as a high-frequency filer to instead verify with a PAGA notice that the firm possessed the resources to be able to litigate the case. The Agency declines to adopt such a rule. Any attorney, including the attorney's law firm, should be understood to represent this fact already by the very act of filing a PAGA notice indicating an intention to pursue a public enforcement action against the employer on a representative basis on behalf of the state and other aggrieved workers. An attorney lacking the intent or capability to do so may be violating professional rules of conduct and presumably would not file the PAGA notice otherwise.

Comment Summary No. 17: Allegations the high-frequency filer designation thresholds improperly focus on quantity, or number, of filings as a substitute for assessing the quality, or merit, of allegations.

Comments Received From: Bibiyan (45D, 15D); Blackstone (45D, H); Klein (45D); Lavi & Ebrahimian (45D, 15D); The Sentinel Firm (45D, 15D); Wilshire (45D); Moon (45D)

Response:

No action taken. Several commenters object to the high-frequency filer designation framework on grounds it is based solely on filing volume without regard to the merit of the allegations being asserted in the filings. (Cf. Response to Comment Summary No. 15.)

While designation of an attorney or law firm as a high-frequency filer is triggered upon meeting a numeric threshold, the additional notice requirements and safeguards applicable upon such designation properly are tailored to addressing problematic filing practices identified and observed by the Agency. (See Response to Comment Summary Nos. 13, 15, 16.) And those actors engaged in such high-volume filing practices have shown an increased propensity towards reliance on boilerplate, template-driven PAGA notices. In this regard, the high-frequency filer framework operates in some respects similar to other provisions of law addressing similar behaviors and which impose additional notice and pleading requirements based on meeting specified numeric filing thresholds. (See Code Civ. Proc., §§ 425.50, 425.55.)

Contrary to the assertions of these commenters, PAGA notice filing practices observed by the Agency, including as described and included in this rulemaking record, illustrate the nature of the PAGA notices generally produced by the most prolific attorneys and law firms. These filing practices demonstrate the need for imposing additional notice requirements and safeguards, including for purposes of ensuring the violations asserted accurately reflect an employee's experiences and actual claims. These additional requirements are designed to

further ensure the proper functioning of the law, and the Agency's roles under it, consistent with the purpose of the statute. No commenter defends or asserts the propriety of boilerplate filing practices as discussed by the Agency.

Moreover, in response to comments asserting the Agency is neglecting to consider the merit of allegations contained in these PAGA notices, the Agency notes some of these commenters object to other aspects of the regulation (regarding non-compliant filer designations) on grounds the Agency lacks authority to determine the merit of the allegations included in a PAGA notice. (See Response to Comment Summary No. 22.) The Agency has express statutory authority to review and investigate PAGA notices. (Lab. Code, § 2699.3, subds. (a)-(c).) The Agency disagrees with the views of these objectors that the Agency lacks authority to adopt appropriate safeguards to ensure the accuracy, applicability, and veracity of the violations alleged in circumstances involving high-volume filing practices more susceptible or prone to the types of boilerplate and template-driven filing practices identified by the Agency.

Comment Summary No. 18: Allegations that provisions regarding the identification of high-frequency filers are not necessary or related to achieving the stated objectives of the regulation.

Comments Received From: D.Law (45D); Moon (45D)

Response:

No action taken. Regulation 17415, subdivision (c)(1)(A) requires an attorney or law firm designated as a high-frequency filer to include a cover letter with a PAGA notice that identifies themselves as a high-frequency filer, while subdivision (e) additionally provides the Agency will maintain a list of designated attorneys or firms. Some comments received by the Agency specifically express support for provisions in the regulation regarding the identification of attorneys or firms designated as high-frequency filers. Certain commenters assert the identification of attorneys or law firms as high-frequency filers is not necessary or related to achieving the objectives described by the Agency or is punitive. (Cf. Response to Comment Summary No. 15.)

The Legislature has assigned the Agency broad rulemaking authority under PAGA. (Lab. Code, § 2699, subd. (u); see Response to Comment Summary No. 15.) Establishing a framework by which to identify those attorneys and firms subject to heightened notice requirements and safeguards is not punitive and imposes no sanction or punishment on such individuals. Rather, such identification measures are necessary to ensure transparency and appropriate to provide notice to employers or opposing counsel in circumstances where additional requirements apply. In this respect, the designation and identification

of high-frequency filers is similar to other provisions of law adopting similar measures to address similar practices. (Code Civ. Proc., § 425.50, subds. (a)(4), (b)(2) [imposing additional pleading requirements applicable to high-frequency litigants]; see Code Civ. Proc., § 425.55, subd. (a) [describing circumstances warranting additional pleading and notice requirements applicable to high-frequency litigants].)

Comment Summary No. 19: Allegations that the employee-certification requirement will have a chilling effect on PAGA notice filings.

Comments Received From: JSC (H); LeadingAge (45D); Non-Profit Coalition (45D); Employers Group (45D); Retailers (45D); CRA (45D); CalChamber (45D); CELA (45D); CRLA (45D); D.Law (45D); Blackstone (45D, H); Moon (45D); CJAC (H)

Response:

No action taken. Subdivision (c)(1)(B) of regulation 17415 requires an employee to provide a certification accompanying a PAGA notice filed on the employee's behalf by a high-frequency filer stating the employee has reviewed the PAGA notice, the notice accurately describes the violations the employee believes they suffered, and the claims are not brought for an improper purpose. Comments received by the Agency from stakeholders representing the interests of both employers and employees generally reflect wide support for this requirement. A number of commenters supporting this requirement urge the Agency to adopt further requirements, including that the employee certification be under penalty of perjury or that all PAGA notices must be accompanied by a similar employee certification (see Response to Comment Summary Nos. 10, 21). Certain commenters assert it is improper to require an employee provide a certification regarding the violations alleged in a PAGA notice, including on grounds employees may be unable to understand complicated legal analyses or that the certification requirement will subject them to increased harassment. (Cf. Response to Comment Summary No. 15.)

The Agency has determined this form of certification by an employee is an appropriate and warranted safeguard in the context of notices filed by high-frequency filers. The Agency has encountered, and continues to encounter, situations during administrative cure proceedings where employees provide information directly contradicting the allegations asserted on their behalf in a PAGA notice. (See ISOR Addend., p. 6.) These situations have arisen in matters involving attorneys or law firms that would meet the criteria for designation as high-frequency filers. These are not instances involving slight discrepancies in how an alleged violation is described or the extent of a particular violation, but rather involve direct contradictions or denials regarding the allegations asserted

in the PAGA notice filed on their behalf. In these situations, the PAGA notice often contains generic, boilerplate allegations, which alone frustrates the functioning of this early dispute resolution process by obscuring the actual nature of the violations at issue so the Agency and employer can readily identify and the employer can endeavor to correct them. When the matter proceeds to a conference at which the Agency requires the attendance of both the parties and their counsel, counsel representing the employee in these matters often appear unprepared, unfamiliar with the case, and generally unfamiliar with their own client's claims. It also appears to the Agency that employees in these situations have not seen the PAGA notices filed on their behalf and appear unaware of the violations being alleged.

Following the 2024 legislative reforms to PAGA, an aggrieved employee only may assert violations the individual personally suffered within one year before the date a PAGA notice is filed. (Lab. Code, § 2699, subd. (c)(1).) The law previously allowed employees to allege any Labor Code violations in a representative capacity so long as the employee suffered just one of the violations alleged. Despite this change in the law, and the purpose of these standing limitations to make PAGA actions more focused and manageable, some attorneys and firms continue to file boilerplate PAGA notices reiterating the same violations using the same or similar language, without apparent regard for whether the employee personally suffered such violations. The employee certification requirement is a necessary and appropriate safeguard for ensuring some basis exists for the violations alleged and that the PAGA notice is not being used for "fishing" or other purposes inconsistent with the intent of the law.

The certification as described in the regulation does not require an employee to attest to or form any legal opinions or conclusions or to engage in any legal analysis. Nor does it impose a requirement the employee produce conclusive evidence or proof of the violations alleged. Rather, it is a simple and appropriately tailored safeguard to ensure a PAGA notice filed by a high-frequency filer accurately reflects the violations the employee believes they suffered and does not allege violations without any basis for doing so (e.g., alleging a violation of Labor Code section 2802 for use of a personal cell phone or vehicle where the employee never used their cell phone or vehicle for work purposes). Objections that the certification requirement may subject employees to harassment or increased scrutiny during litigation or in depositions also are unpersuasive. These commenters have not shown a basis to believe an employee in such circumstances would be subjected to any alleged scrutiny during litigation or discovery procedures different from that experienced presently based on the allegations asserted on the employee's behalf in a PAGA notice or complaint. These objecting commenters also fail to show or explain how any such alleged scrutiny would be different or greater than the employee otherwise would experience in circumstances where a PAGA notice

filed on their behalf contains frivolous allegations or asserts violations inconsistent with the employee's own actual experiences.

Other comments objecting to the employee certification here argue the separate certification requirement in regulation 17420, subdivision (f) renders it unnecessary or moot. The Agency disagrees. All counsel signing PAGA notices filed with the Agency currently should be understood as certifying the claims are not brought for an improper purpose and that such claims are warranted and not frivolous. (See Code Civ. Proc., § 128.7; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 545.) Yet, this has not deterred certain attorneys from engaging in the types of filing practices described by the Agency. Accordingly, the separate employee certification requirement remains necessary as an appropriate safeguard to ensure the claims asserted on the employee's behalf by the filing attorney reflect the violations actually alleged and experienced by the employee.

Comment Summary No. 20: Arguments that the high-frequency filer designations violate equal protection and due process.

Comments Received From: Klein (45D); Moon (45D)

Response:

No action taken. These commenters argue the designation of certain attorneys or law firms as high-frequency filers violates the equal protection and due process clauses of the United States Constitution. The Agency disagrees.

With respect to equal protection, objectors assert regulation 17415 unconstitutionally subjects plaintiff attorneys to additional notice requirements but does not apply such requirements to defense counsel representing employers. The objectors also assert the regulation unlawfully applies additional notice requirements only to certain plaintiff attorneys but not all. Neither claim has merit. The regulation applies a high-frequency filer designation to "any" attorney or law firm filing over a certain number of PAGA notices within a defined period. On its face the regulation does not distinguish between any categories of attorneys or law firms. Regarding contention the regulation discriminates between plaintiff (employee) and defense (employer) counsel, the statute does not contemplate employers filing PAGA notices, as PAGA notices only may be filed by or on behalf of "aggrieved employees." Nor does the exclusion of nonprofit organizations from the high-frequency filer framework render the regulation void under equal protection grounds, and the Agency has identified rational grounds to exclude such organizations from these provisions. Ultimately, attorneys or law firms who serially file boilerplate PAGA notices are

not a "suspect class" for equal protection purposes, nor do the additional notice requirements applicable to high-frequency filers burden any fundamental right.

Regarding due process, the regulation does not deprive any attorney or law firm any fundamental right or interest or otherwise burden a fundamental right. The regulation does not prevent any attorney or law firm from filing PAGA notices or pursuing such claims in court after exhausting applicable administrative requirements. Rather, the regulation merely adopts additional notice requirements and safeguards to PAGA notice filings by attorneys or firms designated as high-frequency filers. The Agency has an interest in ensuring the statute is not subject to abuse.

Comment Summary No. 21: Requests that the Agency adopt additional measures to address high-volume filing practices and abuses.

Comments Received From: HCA (45D); CABIA (45D); Non-Profit Coalition (45D); Employers Group (45D); Retailers (45D); CRA (45D, H); CalChamber (45D, H); Torrance Area Chamber of Commerce (H); CJAC (H); Jake Darin (H)

Response:

No action taken. Many commenters urge the Agency to adopt additional requirements in connection with the high-frequency filer provisions of regulation 17415. Suggested additional measures include (1) attorney verifications or employee certifications under penalty of perjury; (2) attestations that an attorney has conducted a diligent investigation of the claims; (3) requirements that all or a defined portion of PAGA notices filed by high-frequency filers be investigated by the Labor Commissioner's Office; (4) requiring ownership disclosures or other measures to prevent law firms from changing names or reorganizing to avoid designation; (5) increased oversight of attorney referral practices prevalent amongst some plaintiff firms; (6) reporting designated attorneys to The State Bar; (7) allow nonprofit organizations to be subject to high-frequency designation; and (8) publish filing statistics for high-frequency filers on a periodic basis.

The Agency declines to adopt such additional measures or requirements. The Agency does not find declarations under penalty of perjury, for a prelitigation notice of this nature, is appropriate or warranted. The employee certification as reflected in subdivision (c)(1)(B) of regulation 17415 is sufficient to ensure the violations alleged accurately reflect the claims asserted by the employee and are not brought for an improper purpose. The separate certification requirement for attorneys as stated in regulation 17420, subdivision (f), and modeled on similar provisions of Code of Civil Procedure section 128.7, is sufficient to reflect an attorney has exercised reasonable diligence and is not alleging or pursuing

unfounded claims for an improper purpose. These certifications are sufficient to address the underlying problems and concerns identified by the Agency without the necessity of formal declarations or affidavits.

The Agency also declines to adopt measures monitoring or exercising oversight of law firm business models or referral practices. Such measures would extend beyond the Agency's interest and authority in administering the law. The Agency further declines to adopt any mandatory State Bar reporting requirement in connection with the high-frequency filer provisions of this regulation or to separately publish applicable filing statistics. Filing data generally is publicly available at <https://cadir.my.salesforce-sites.com/PagaSearch>. And while high-volume filing practices do implicate a number of concerns, including as identified by the Agency, the Agency does not find it appropriate to mandate routine or periodic State Bar reporting based on these circumstances alone.

The Agency additionally declines to adopt a rule that the Labor Commissioner's Office be required to investigate all or a defined portion of PAGA notices by high-frequency filers. Such a rule would interfere with the discretion and authority of the Labor Commissioner's Office and otherwise is contrary to the purpose of the law. (See Response to Comment Summary No. 29, 39.)

Finally, the Agency declines to extend high-frequency filer provisions to nonprofit organizations. As noted previously in the Agency's initial statement of reasons, no nonprofit organization is filing PAGA notices at a rate near triggering high-frequency filer concerns, nor do filing practices of these groups implicate the types of concerns described by the Agency regarding the boilerplate, template-driven tendencies of the most prolific PAGA notice filers. Further, the Agency finds it inappropriate to apply these provisions to nonprofit organizations providing critical public services, often to underserved or vulnerable communities, and who do not share the same economic or financially interested motivations as other attorneys or private law firms.

Comment Summary No. 22: Assertions that the "vexatious filer" designation is neither accurate nor appropriate.

Comments Received From: CAC (45D); CELA (45D); SEIU (45D); CRLA (45D); Yoon Law (45D); Wilshire (45D, H); Klein (45D); HCA (15D)

Response:

In response to comments expressing concern with the term "vexatious" as used in regulation 17415, the Agency modified the applicable provisions of the regulation to refer instead to "non-compliant" filers.

As noted previously (see Response to Comment Summary No. 15), comments received by the Agency express widespread support for the provisions of regulation 17415, including those provisions concerning the designation of certain actors as "vexatious" (now, "non-compliant") filers. Several commenters, including from amongst those supporting the general framework set forth in the regulation, expressed objections to the "vexatious" terminology. Other commenters objecting generally to the regulation also argue that term is inappropriate because it assumes the allegations have no merit or may be applied only after a final determination the allegations have no merit. These commenters assert the Agency lacks authority to make merit-based determinations during its preliminary review of a PAGA notice. Some commenters also express similar concerns the Agency cannot make determinations whether allegations in a PAGA notice are "frivolous" for purposes of potentially designating an individual as a "vexatious filer" at this preliminary stage of proceedings. (See reg. 17415, subd. (b)(2), as originally proposed Feb. 6, 2026.)

While "vexatious" conduct as defined in other provisions of law is not confined solely to situations requiring merit-based final determinations (see, e.g., Code Civ. Proc., § 391, subd. (b)(3); Cal. Code Regs., tit. 8, § 10430, subd. (a)(2)), the Agency modified regulation 17415 to replace "vexatious" with "non-compliant," including in subdivision (b)(2) defining the criteria for potential designation of a person or attorney as a "non-compliant filer." This is a term suggested by several commenters, and the Agency finds this language accurately encompasses the conduct the regulation is designed to address.

The Agency also modified the regulation in terms of the potential application of this designation to instances where allegations "appear frivolous," as opposed to more determinative language of the original proposal describing instances where allegations "are frivolous." But, the Agency notes it fairly may scrutinize the allegations of a PAGA notice, including during any initial review or additional investigation, where the accuracy or veracity of the claims appear questionable or where Labor Code sections allegedly violated appear inapplicable to the employee and the employer. Boilerplate, template-driven filing practices have shown an increased propensity towards or likelihood of asserting frivolous claims unrelated to an employee's actual experiences or employment with their respective employer in any given case. (See Lab. Code, § 2699, subd. (c)(1).)

<u>Comment Summary No. 23</u>: Assertions that the Agency should adopt clear, objective standards in defining the requirements for designation of an individual as a non-compliant filer.

Comments Received From: Non-Profit Coalition (45D, 15D); Employers Group (45D, 15D); CAC (45D); CELA (45D); CRLA (45D); Bibiyan (45D, H, 15D); D.Law (45D); Blackstone (45D, H, 15D); Klein (45D, 15D); Lavi & Ebrahimian (45D); Sentinel (45D, 15D); Wilshire (15D); Moon (45D, 15D); Delicato Vineyards (H); James Correa (15D); CABIA (15D); CalChamber (15D)

Response:

See modifications to regulation 17415, subdivision (b)(2). As originally proposed, this subdivision defined a "vexatious filer" as any person or attorney who "repeatedly" files PAGA notices that fail to comply with legal requirements, including by inadequately stating the facts and theories supporting the violations alleged or where the allegations are frivolous or appear motivated by an improper purpose. The Agency notes similar provisions of law define examples of vexatious conduct in similar terms. (Code Civ. Proc., § 391, subd. (b)(3); Cal. Code Regs., tit. 8, § 10430, subd. (a)(2).) However, some commenters express concern such standards for designation of an individual as a "vexatious filer" were vague and did not incorporate any notice or warning provisions to alert individuals of potential issues, and, as such, could result in arbitrary enforcement.

The Agency subsequently modified this provision to adopt more clearly defined and objective criteria for purposes of designating individuals as "non-compliant" filers. As modified, a non-compliant filer is now defined as any person or attorney who has filed three or more PAGA notices within the preceding 12-month period that do not comply with applicable PAGA notice filing requirements or assert allegations that appear frivolous or intended to harass, and the individual continues to file such notices after warning by the Agency. Accordingly, modified regulation 17415, subdivision (b)(2) adopts a framework incorporating objective criteria, defines a number of non-compliant filings necessary before any non-compliant designation could attach, an appropriate warning system, and a requirement non-compliant filings continue even after such prior warning.

The Agency also notes regulation 17420, subdivision (h) codifies a process by which the Agency may inform a person or attorney that a PAGA notice does not comply with applicable requirements, including allowing the individual an opportunity to amend the PAGA notice to correct such deficiencies identified by the Agency. Moreover, subdivision (d) of regulation 17415 encompasses additional notice requirements before any individual may be designated as a non-compliant filer. Specifically, the Agency must provide the individual written notice of the potential designation (which would occur after the criteria for designation as set forth in subdivision (b)(2) are satisfied), and the individual is provided an opportunity to respond before any designation could attach.

Notwithstanding this warning and notice framework before an individual may be designated as a non-compliant filer, certain comments received by the Agency assert the regulation allows for designation of an individual as a non-compliant filer without warning. This is not true, as set forth above and as reflected in the plain language of the regulations. In fact, other commenters generally supporting these regulatory provisions urge the Agency to remove or reduce the warning and notice requirements set forth before an individual may be designated as a non-compliant filer. The Agency declines to do so and finds the framework as codified reflects an appropriately tailored approach to identifying individuals most prone to abusive behaviors and who fail to correct such behaviors even after warning and notice by the Agency. Moreover, the warning and notice provisions of regulations 17415 and 17420 include requirements the Agency identify the manner in which an individual's PAGA notices are non-compliant or otherwise reflect abusive behavior, thereby providing such individuals ample opportunity to correct and conform their behavior on a prospective basis. In this respect, several commenters request the Agency adopt provisions that allow an individual who has filed non-compliant PAGA notices to correct or "cure" such defects. The notice and warning provisions of regulations 17415 and 17420 as described above afford ample opportunity to do so. As set forth in the regulations, the designation of an individual as a non-compliant filer truly is a measure of last resort after already providing opportunities for the subject individual to conform their conduct in accordance with the Agency's instructions and applicable requirements.

Certain comments received by the Agency also assert the modified non-compliant filer definition set forth in subdivision (b)(2) of regulation 17415 reflects a lower, and even more vague, standard than the originally proposed language. Again, the Agency finds such assertions unpersuasive and lacking in merit. Subdivision (b)(2) adopts appropriate objective criteria concerning the potential designation of individuals as non-compliant filers, coupled with an appropriate warning system, including as suggested and supported by other stakeholders representing both employers and employees.

Other concerns expressed in some comments that the Agency may designate filers as non-compliant based on mere technical issues are not well taken. First, the regulation encompasses a multi-tiered warning and notice framework before any individual may be designated as non-compliant. Regulation 17415 addresses abusive filing practices and adopts certain safeguards to deter and control them. To the extent technical, non-substantive defects in a PAGA notice exist, those may be addressed easily through such prior notice and warning opportunities. (Reg. 17420, subd. (h).) However, regulation 17415 authorizes the Agency to take such measures as appropriate to address circumstances involving repeated patterns of behavior that appear inconsistent with the intent and purpose of the law. (See reg. 17415, subd. (a).)

Certain commenters assert the non-compliant filer framework is inherently vague because the underlying statutory requirement that a PAGA notice state "the facts and theories" supporting the violations alleged is, itself, vague and ambiguous. (Lab. Code, § 2699.3, subds. (a)(1)(A), (b)(1), (c)(1)(A).) Some of these commenters similarly assert subdivision (d)(2)(B) of regulation 17420 is vague in requiring a PAGA notice include "[a] short and plain statement of the facts and theories" supporting the alleged violations. Other objecting commenters assert regulation 17415 is inconsistent with the "low bar" applicable to PAGA notices and policies favoring liberal amendments. The Agency does not find these contentions persuasive. (See Response to Comment Summary Nos. 7, 13, 15.) Moreover, regulations 17415 and 17420 both incorporate robust warning and notice procedures to facilitate the amendment of deficient PAGA notices.

Finally, certain comments received by the Agency assert the mandated PAGA notice form to be adopted by the Agency pursuant to regulation 17420 is sufficient to address the Agency's concerns regarding boilerplate PAGA notices, and thus regulation 17415 is unnecessary. That Agency-prescribed form is one measure designed, in part, to address such abusive filing practices. However, the form by itself does not negate or eliminate the need for the Agency to perform its assigned functions, including as it relates to reviewing the substantive allegations and content included in such notices to ensure compliance with applicable requirements and deter deficient notice practices.

Comment Summary No. 24: Requests that the Agency adopt provisions describing its procedures for screening or auditing PAGA notices, including allowing third parties to alert the Agency to abusive practices or contest the sufficiency of a PAGA notice.

Comments Received From: CBHA (45D); AAHOA (45D); Retailers (45D); CRA (45D, H); CalChamber (45D, H); Torrance Area Chamber of Commerce (H); CJAC (H)

Response:

No action taken. Some commenters expressing support for the non-compliant filer provisions of regulation 17415 request the Agency adopt specified procedures for reviewing or auditing PAGA notices. The Agency declines to do so. The Agency is not required to publicize the details of its internal and deliberative investigation or review processes. The Agency is entitled to review or investigate any notices pending before it during the periods allowed under the statute.

The Agency also rejects requests from commenters that it adopt procedures allowing third parties to alert the Agency to instances of abusive filing practices. Both the statute and regulations allow employers to file responses to PAGA notices. (Lab. Code, § 2699.3, subds. (a)(1)(B), (c)(1)(B); reg. 17421.) Accordingly, an avenue already exists to permit employers to respond to specific PAGA notices filed against them. The Agency declines to adopt any separate process by which parties formally may file requests regarding attorneys they seek to be designated as non-compliant. In this regard, some commenters express a concern these provisions of regulation 17415 may subject attorneys to harassment. One commenter described threats received from defense counsel in one case about reporting the commenter to the Agency in connection with an attempt to leverage a settlement favorable to the employer's interests. The commenter included the redacted email communication with his comment. The Agency strongly condemns such actions as described in the comment and as reflected in the produced email. Such tactics—including the false contentions set forth in the email accompanying the comment—implicate serious ethical concerns. (See Cal. Rules Prof. Conduct, rule 3.10(a) ["A lawyer shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute"].)

Ultimately, the Agency finds the type of reporting or motion process requested by some commenters to be unnecessary to the performance of the Agency's role under the statute.

Comment Summary No. 25: Whether the Agency should allow law firms to be designated as non-compliant filers or subject to prefiling screening requirements upon designation of an attorney as a non-compliant filer.

Comments Received From: Employers Group (45D); Retailers (45D); CRA (45D); CalChamber (45D, H, 15D); CRLA (45D, H); D.Law (45D); Torrance Area Chamber of Commerce (H); CJAC (H); Bibiyan (H); James Correa (15D); LeadingAge (15D)

Response:

See modifications to regulation 17415, subdivision (d)(3)(A). Regulation 17415, subdivisions (b)(2) and (d) describe procedures for designating "any person or attorney" as a non-compliant filer. As originally proposed, subdivision (d)(3)(A) provided that, upon designation of an attorney as a vexatious filer, the Agency may apply prefiling screening requirements to the designated attorney's law firm in certain circumstances. Many commenters supported these provisions, and a number of commenters urge the Agency to adopt provisions allowing the designation of law firms as vexatious or non-compliant filers. Other commenters

object to applying vexatious filer consequences (i.e., a prefiling screening order) to a law firm based on a single attorney's designation.

Upon consideration of these comments, the Agency modified subdivision (d)(3)(A) to remove language applying prefiling screening requirements to a designated attorney's law firm. As modified, this subdivision instead requires attorneys in a law firm where one or more attorneys has been designated as a non-compliant filer to certify when filing new PAGA notices that such designated attorney(s) were not involved in preparing, filing, or handling the matter.

Some commenters generally supportive of the non-compliant filer provisions of regulation 17415 continue to request the Agency allow law firms to be designated as non-compliant filers and be subject to prefiling screening requirements. The Agency declines to do so. The non-compliant filer provisions of regulation 17415 are addressed to individual conduct of an advanced nature warranting the imposition of prefiling screening safeguards as a deterrent to repeated abusive behavior. Other provisions of law addressing similar conduct also are limited to addressing individual behaviors or habitual or repeat offenders. (See Code Civ. Proc., § 391; Cal. Code Regs., tit. 8, § 10430.)

Other commenters request the Agency adopt provisions requiring the Agency provide notice to an attorney's law firm (or a firm's owners, partners, shareholders, etc.) if the Agency is considering designating, or has designated, an attorney as a non-compliant filer. The Agency declines to do so. It is a law firm's responsibility to oversee and manage its attorneys, and attorneys presumably will disclose important case information or updates to their appropriate colleagues or principals within their law firms.

Comment Summary No. 26: Allegations that the certification requirement applicable to attorneys in the same law firm as an attorney designated a non-compliant filer is vague and punitive.

Comments Received From: Alsco-Geyer Irrigation (15D); Blackstone (15D); Wilshire (15D)

Response:

No action taken. Regulation 17415, subdivision (d)(3)(A)(ii) states that an attorney in a law firm where one or more attorneys have been designated as a non-compliant filer must include a certification with new PAGA notice filings stating this fact and further that an 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." Certain commenters objecting to the non-compliant

filer provisions of this regulation assert this certification requirement is both vague and punitive.

The regulation explains this certification requirement is intended to prevent circumvention of prefiling screening rules applicable to attorneys designated as non-compliant filers. As noted above (see Response to Comment Summary No. 16), PAGA notice filings in many law firms generally are concentrated within a small group of attorneys or even a single attorney or two. In light of filing practices observed by the Agency and described in this rulemaking record, the Agency finds the certification requirement of subdivision (d)(3)(A)(ii) is warranted and necessary to prevent designated non-compliant filers from circumventing applicable prefiling screening rules by having another attorney within the firm file notices on their behalf.

Commenters objecting to this certification requirement contend it is vague, including because the meaning of the word "involve" is unclear. The Agency disagrees the language of the regulation is vague or confusing. (See Merriam-Webster Dictionary, at <https://www.merriam-webster.com/dictionary/involve> [as of Oct. 20, 2026] [defining "involve" as meaning "to engage as a participant" or "to take part"].)

Objecting commenters also assert the certification requirement is punitive. This also is incorrect. Nothing in the language of the required certification is punitive in nature. The certification requirement is intended to provide transparency and aid in ensuring the integrity of the administrative requirements of the law. (See, e.g., *Advanced Messaging Technologies, Inc. v. EasyLink Services Intern. Corp*. (C.D. Cal. 2012) 913 F.Supp.2d 900, 912-913 [describing disqualification as concerned with "preserv[ing] public trust" in the "administration of justice and the integrity of the bar" and imposing appropriate screening mechanisms].) In light of observed filing practices, the Agency finds this certification requirement is an appropriate and necessary safeguard to ensure the deterrent consequences of a non-compliant filer designation based on an individual's prior abusive filing practices are not easily circumvented by having other attorneys within the same law firm file notices on a designated attorney's behalf.

Comment Summary No. 27: Prefiling screening requirements applicable to persons or attorneys designated as non-compliant filers.

Comments Received From: CELA (45D); Yoon Law (45D); D.Law (45D); Moon (45D)

Response:

No action taken. Regulation 17415, subdivision (d)(3)(i) states any person or attorney designated as a non-compliant filer is subject to a prefiling screening order. Subdivision (b)(3) defines a prefiling screening order as an order issued by the Agency prohibiting the designated attorney or person from filing new PAGA notices without first being screened for compliance with applicable requirements. In this respect, a prefiling screening order functions similarly to other provisions of law requiring screening and approval before an individual designated as a vexatious litigant may file new actions. (See Code Civ. Proc., § 391.7; Cal. Code Regs., tit. 8, § 10430, subd. (d).) Subdivision (d)(3)(B) of regulation 17415 clarifies that applicable limitations periods are tolled pending review of a PAGA notice subject to prefiling screening and that periods applicable to administrative review processes under the law do not commence until the PAGA notice is accepted for filing. Subdivision (d)(3)(C), in turn, describes the process by which the Agency will review and notify the parties whether a PAGA notice subject to prefiling screening has been accepted for filing, and further sets a 30-day period after which a PAGA notice will be deemed accepted for filing if the Agency does not provide notice otherwise before then.

Many commenters representing both employers and employees generally support prefiling screening requirements applicable to persons or attorneys designated as non-compliant filers, with a number of commenters urging the Agency to adopt stricter or more substantial consequences for designated individuals. (See Response to Comment Summary No. 29.)

Commenters objecting to prefiling screening rules assert the Agency may not extend the administrative review periods defined in statute, the prefiling screening period is vague and unclear, and that these requirements will impede access to the courts. The Agency does not find these arguments concerning measures necessary to address and deter demonstrated abusive practices to be persuasive.

As noted by these objectors, the statute generally allows the Agency a review period of 65 days to determine whether to investigate the violations alleged in a PAGA notice. (Lab. Code, § 2699.3, subd. (a)(2)(B).) The statute also allows an employer an opportunity to cure certain types of violations before the Agency, and to submit a cure proposal to the Agency for certain claims within 33 days after receiving the PAGA notice (Lab. Code, § 2699.3, subd. (c)(2)(A)) or a notice of cure pertaining to wage statement violations within 33 days of the postmark date of the PAGA notice (Lab. Code, § 2699.3, subd. (c)(3)(A).) Objectors assert the Agency may not extend these statutory periods.

The imposition of prefiling screening requirements is a narrowly and appropriately tailored consequence upon designation of a person or attorney

as a non-compliant filer, similar to other provisions of law addressing similar conduct. (Code Civ. Proc., § 391.7; Cal. Code Regs., tit. 8, § 10430, subd. (e).) The Agency is not adopting general rules of procedure inconsistent with periods set forth in the statute, but rather limited measures applicable only in extraordinary circumstances involving particular individuals with a demonstrated history of abusive filing practices. Such measures are necessary in order to protect the integrity and proper functioning of the statute against the conduct of individuals with a demonstrated history of abuse. This provision functions similarly to a stay of proceedings when a vexatious litigant subject to a prefiling order seeks to file a new action. (Code Civ. Proc., § 391.7, subd. (c).) In these circumstances, where an individual has been designated as a non-compliant filer, the Agency finds this provision appropriate and necessary to avoid prejudice to employers seeking to exercise their rights to respond to a PAGA notice or to pursue a cure in the limited periods allowed, as well as the Agency itself in the context of the limited time allowed it under the statute to undertake certain actions. (See, e.g., *Galloway v. Workers' Comp. App. Bd*. (1998) 63 Cal.App.4th 880, 882 [statutory limitations period tolled until compliance with regulatory notice requirements].) Allowing limited prefiling screening in these extraordinary circumstances as provided under the regulation further provides clarity to employers regarding the time available to undertake certain actions, including pursuing available opportunities to cure alleged violations.

The Agency also does not find merit in objections to prefiling screening rules as vague or impeding access to the courts. Subdivision (d)(3)(C) expressly states the period available for prefiling screening is limited to 30 days, and a PAGA notice will be deemed accepted for filing upon expiration of that 30 day period if the Agency does not provide written notice before then that the proposed new PAGA notice is deficient. Nor does this limited screening period—applicable only in extraordinary circumstances involving individuals with a demonstrated history of abusive filing practices—constitute an unwarranted impediment or burden on access to the courts. As noted, the screening period is limited in duration and warranted to ensure compliance with and proper functioning of the administrative notice and procedural requirements that must be exhausted before any litigation under the statute may be commenced.

Comment Summary No. 28: Defining the period in which a person or attorney remains designated as a non-compliant filer.

Comments Received From: Employers Group (45D); CAC (45D); CELA (45D); Moon (45D)

Response:

No action taken. Regulation 17415, subdivision (d)(4) allows a person or attorney designated as a non-compliant filer to petition to Agency to remove such designation. No petition to remove a designation may be filed within the first six months after the individual is so designated. The Agency may prescribe a longer period before any removal petition may be filed in certain circumstances based on the nature of the conduct warranting the designation.

As noted, many commenters support the non-compliant filer and prescreening filing requirements set forth in this regulation. Regarding the period for which a designation remains in effect or before any removal petition may be filed, some commenters assert the period in which the designation remains effective is vague or unclear, suggest the Agency should adopt an expiration date for non-compliant filer designations, or urge the Agency to reduce or lengthen the time before a removal petition may be filed.

Similar provisions of law addressing similar behaviors in the context of vexatious litigants do not attach expiration dates on such designations. (Code Civ. Proc., §§ 391.7, 391.8; Cal. Code Regs., tit. 8, § 10430.) Thus, they generally remain in effect pending a determination of a change in the facts upon which the designation first was made. (See Code Civ. Proc., § 391.8, subd. (c).) The Agency finds the six-month period before a removal petition may be filed is appropriate, particularly considering the warning and notice provisions that apply before an individual may be designated a non-compliant filer. In the face of repeated noncompliance and abusive filing practices undeterred by prior warning and notice from the Agency, prohibiting such individual from seeking to remove the designation for six months is a reasonable measure to address and deter such conduct, and the Agency finds that reducing the period before a removal petition can be filed would lack the same deterrent effect.

With respect to requests to extend or lengthen the period before a removal petition may be filed, the Agency notes Code of Civil Procedure section 391.8, subdivision (b) generally prohibits an individual from petitioning to remove a vexatious litigant designation to once per every 12 month period. Nevertheless, the Agency finds six months is a reasonable and appropriate period to afford the Agency reasonable opportunity to review the individual's filing practices since being designated as non-compliant to determine whether a sufficient change in practice has occurred to warrant removal of the designation.

Finally, the Agency disagrees with comments objecting to the Agency's discretion under the regulation to assign a period longer than six months before a removal petition could be filed based on the nature of the persistent noncompliance or abuse presented in a particular case. As noted above, similar provisions of law do not attach expiration dates to vexatious litigant designations while limiting a designated individual to one removal petition per

12-month period. The Agency finds it appropriate in situations involving more egregious abusive conduct to allow it discretion to assign a period longer than six months before any petition to remove a non-compliant filer designation could be removed.

Comment Summary No. 29: Requests that the Agency adopt stricter, more consequential measures to address abusive filing practices by non-compliant filers.

Comments Received From: JSC (45D); HCA (45D); CABIA (45D); CBHA (45D); Employers Group (45D); Jake Darin (H)

Response:

No action taken. While many commenters express support for the non-compliant filer provisions of regulation 17415, a number of commenters urge the Agency to adopt additional or more consequential measures upon designation of an individual as non-compliant. Such proposed measures include: (1) require the Labor Commissioner's Office to conduct a full investigation of the violations alleged in all cases filed by a non-compliant filer; (2) impose monetary penalties or sanctions; (3) suspend or bar persons from filing PAGA notices or handling PAGA cases; (4) mandate periodic reporting to The State Bar of all attorneys designated as non-compliant filers; (5) restrict or prohibit case referrals or referral fee collections by non-compliant filers; (6) require ownership disclosures of law firms where attorneys have been designated as non-compliant filers; (7) adopt a presumption of vexatiousness attendant to all new PAGA notices filed by a non-compliant filer; (8) notify an employer if the Agency is considering designating an individual as a non-compliant filer; and (9) adopt provisions allowing courts to supplement enforcement through the designation of individuals as vexatious filers.

The Agency declines to adopt such measures. With respect to court processes to assist in identifying vexatious filers, procedures already exist to allow courts to address abusive filing practices that occur during the course of judicial proceedings.

Assuming the Agency had authority to impose monetary penalties or sanctions, the Agency does not find such measures reasonably necessary to the goals and deterrent effect sought to be achieved through these regulations. Similar provisions of law addressing similar types of conduct do not provide for or contemplate monetary penalties or sanctions. (Code Civ. Proc., § 391.7; Cal. Code Regs., tit. 8, § 10430.) The Agency also views prefiling screening as an appropriate and tailored approach in seeking to deter abusive behaviors and conform conduct to applicable requirements on a prospective basis, as

opposed to more extreme actions such as suspending or barring individuals from filing PAGA notices. The Agency similarly declines to adopt mandatory periodic State Bar reporting requirements regarding attorneys designated as non-compliant filers. Again, the Agency finds prefiling screening requirements an appropriate and narrowly tailored approach towards deterring and correcting abusive behaviors regarding prelitigation notice requirements. For similar reasons, the Agency also declines to adopt provisions seeking to regulate generally the types of referral or "lead farm" practices described by some commenters in urging the Agency to take a stricter approach to regulating law firm filing practices. The Agency also finds it unnecessary to require disclosure of law firm ownership interests where an attorney is designated as a non-compliant filer. Such disclosures bear no relation to the designation of an individual attorney as a non-compliant filer or the limited measures adopted by the Agency to deter abusive practices and conform conduct to the requirements of the law moving forward.

As addressed in other responses to similar comments, the Agency declines to adopt a rule requiring the Labor Commissioner's Office investigate all notices filed by a non-compliant filer. (See Response to Comment Summary Nos. 21, 39.) The Agency further does not deem it appropriate to adopt presumptions of vexatiousness in PAGA notice filings or to mandate investigations of cases filed by certain attorneys. The Agency's primary concern under regulation 17415 is deterring abusive PAGA notice filing practices. Upon ensuring compliance with applicable filing requirements designed to ensure proper notice of the violations alleged and proper functioning of the administrative processes available under the statute, the Agency deems it unnecessary at this time to adopt additional or further screening or casehandling procedures applicable to matters filed by individuals designated as non-compliant filers. Finally, the Agency declines to adopt a provision requiring notice to an employer if the Agency is considering designating an individual as a non-compliant filer. Consistent with Agency practice, if the Agency finds a PAGA notice is insufficient the Agency will notify the employer to ensure the employer is aware of such action, including for purposes of complying with applicable timeframes. But the Agency does not find an employer or any other third person to be entitled to notice in any separate proceeding under regulation 17415 if the Agency is considering designating an individual as a non-compliant filer, nor does the regulation provide for employer or third person input into such inquiries. (Cf. Response to Comment Summary No. 24.)

Comment Summary No. 30: Arguments that the non-compliant filer provisions of regulation 17415 violate equal protection and due process.

Comments Received From: Klein (45D); Wilshire (45D); Holmes (H); Moon (45D)

Response:

No action taken. Several commenters assert the provisions of regulation 17415 regarding the designation of certain persons or attorneys as non-compliant filers violate both the equal protection and due process clauses of the United States Constitution and argue the Agency should withdraw or remove these provisions.

With respect to equal protection, commenters assert regulation 17415 unconstitutionally subjects plaintiff attorneys to consequences for abusive filing practices but does not impose consequences on defense counsel representing employers, whom at least one commenter argues routinely file frivolous answers to pleadings in court. The Agency finds these objections lack merit. Subdivision (b)(2) of the regulation allows for designation of "any person or attorney" as a non-compliant filer. On its face the regulation does not distinguish between any categories of persons or attorneys. In any event, the statute does not contemplate employers filing PAGA notices, as PAGA notices only may be filed by or on behalf of "aggrieved employees." Individuals or attorneys who repeatedly file deficient PAGA notices in a manner indicating abuse of the law and its prelitigation administrative notice requirement are not a "suspect class" for equal protection purposes. Finally, to the extent it is believed defense counsel are filing frivolous pleadings in court, such matters appropriately may be raised to the court in which any such matter is pending. (See Code Civ. Proc., § 128.7.)

Regarding due process, the regulation does not deprive any person or attorney any fundamental right or interest or otherwise burden a fundamental right. The regulation does not prevent any person or attorney from filing PAGA notices or pursuing such claims in court after exhausting applicable administrative requirements under the statute. Rather, the regulation merely adopts certain screening procedures to ensure notices filed by persons or attorneys with a demonstrated history of abusive filing practices comply with applicable requirements. Upon satisfaction of such basic notice requirements, any matters filed by a person or attorney designated as a non-compliant filer may proceed similar to any other matter properly filed with the Agency. No commenter disputes the Agency has an interest in ensuring the statute is not subject to abuse.

To the extent commenters object to the regulation as violating due process because it does not provide objective standards, notice of potential designation as a non-compliant filer, or an opportunity for review or to respond, the Agency has responded to such objections and finds they lack merit. (See Responses to Comment Summary No. 23.) The regulation describes the applicable objective criteria considered by the Agency, provides a warning and notice framework, and allows any person whom the Agency has notified of

potential designation an opportunity to respond before the Agency makes a determination whether to designate the individual as a non-compliant filer.

Comment Summary No. 31: Assertions that the Agency did not consider or propose reasonable alternatives to the provisions of regulation 17415 addressing abusive filing practices.

Comments Received From: Wilshire (45D); Moon (45D)

Response:

These commenters assert the Agency failed to comply with applicable notice requirements in connection with this rulemaking process because the Agency did not consider alternatives to the provisions of regulation 17415. The Agency's February 6 notice of proposed rulemaking appropriately cited and referenced the requirements of Government Code section 11346.5, subdivision (a)(13). The Agency invited interested persons to present alternatives in public comments. The Agency has considered such comments, made modifications where determined appropriate, and explained its reasoning for not adopting any offered alternatives, as discussed in the foregoing responses.

Amendments to PAGA Notices

Comment Summary No. 32: Clarification regarding when an amended PAGA notice is required.

Comments Received From: SEIU (45D)

Response:

No action taken. This commenter expresses its view that amended PAGA notices should be required only if the claimant is alleging new facts or theories giving rise to different claims for relief based on separate Labor Code violations. The commenter further urges application of the same standards as applied by courts.

The standards set forth in subdivision (g) of regulation 17420 regarding the articulation of alleged Labor Code violations to the Agency for purposes of exhausting administrative requirements before such violations may be alleged in any civil action or released in any PAGA settlement are consistent with existing law. (See Response to Comment Summary No. 12.) The Agency does not deem it appropriate to attempt to further define the circumstances under which an amended PAGA notice is required to articulate new allegations. Such inquiries often involve fact-based analyses more amenable to case-by-case

determination. As the commenter recognizes, courts have developed standards for analyzing such issues. (See, e.g., *Uribe*, *supra*, 70 Cal.App.5th at p. 1005 [alleged violation of Labor Code section 2802 for failure to reimburse uniform and shoe expenses did not encompass separate claim for failure to reimburse for cell phone use].)

Comment Summary No. 33: Whether allegations in amended PAGA notices "relate back" to original PAGA notice.

Comments Received From: Retailers (45D); SEIU (45D, H)

Response:

No action taken. One commenter requests the Agency adopt language governing when violations alleged in an amended PAGA notice will "relate back" to the filing date of an original PAGA notice. Whether allegations in an amended notice may relate back to an earlier filing involves a fact-based inquiry most appropriately suited to case-by-case determination. Courts have developed standards to determine the circumstances in which the relation back doctrine may apply (see, e.g., *Hutcheson v. Superior Court* (2022) 74 Cal.App.5th 932), and the Agency finds existing law provides sufficient guidance in addressing such issues. Another commenter proposes the Agency adopt a rule that allegations not relate back to an earlier filing unless agreed to by an employer. The Agency finds no support for such a proposal and declines to adopt it.

Comment Summary No. 34: Allegations that the timeframes for administrative review or investigation of amended PAGA notices conflict with the statute.

Comments Received From: Blackstone (15D); Capstone (15D); Moon (15D)

Response:

No action taken. These commenters argue that subdivision (c) of regulation 17420.5 conflicts with the statute. The commenters are incorrect.

This provision clarifies that the administrative review and investigation periods generally applicable to PAGA notices also apply to amended PAGA notices. (See also reg. 17420.5, subd. (d)(2) [exhaustion of administrative review and investigation periods under subdivision (c) required before amending a complaint or submitting a proposed settlement agreement for approval in pending judicial proceedings].) The statute does not reference amendments to PAGA notices, let alone establish any timeframes applicable to the review or investigation of amended notices. However, as noted by the Agency during the

course of this rulemaking process, amendments to PAGA notice are a common practice. Indeed, the online PAGA filing portal includes a specific hyperlink for the submission of amended PAGA notices. No commenter disputes amended PAGA notices are a common practice under the law.

Accordingly, and in light of the lack of statutory guidance, the Agency deems it appropriate to specify the timeframes governing the review and investigation of amended PAGA notices. Establishing such timeframes is necessary to provide clarification regarding applicable administrative requirements and processes. The administrative review and investigation periods set forth in the regulation are consistent with generally accepted current practices. One commenter asserts this provision conflicts with *Brown v. Dave & Buster's of California, Inc*. (2025) 116 Cal.App.5th 164. This is wrong. The court there acknowledged the statute is silent regarding the timeframes applicable to amended PAGA notices. (*Id*. at p. 172.) In the Agency's experience, courts generally adhere to the 65-day review and 120-day investigation periods set forth in the statute for PAGA notices in the context of amended PAGA notices, and parties generally assume their applicability, as well. Ultimately, *Brown*—also cited by the Agency previously in explaining the basis and necessity of this provision—reinforces the need for regulatory guidance on this issue.

Comment Summary No. 35: The Agency should allow a shortened administrative review period for amended PAGA notices.

Comments Received From: SEIU (45D)

Response:

No action taken. This commenter suggests the Agency adopt provisions allowing a claimant to request expedited Agency review of amended PAGA notices. The commenter states such expedited review may be necessary in certain situations to avoid delays in pending litigation. The Agency does not deem it necessary to establish any specific procedures for seeking expedited review in any case. The Agency notes it occasionally receives such requests for expedited review of amended PAGA notices. A claimant seeking expedited review may make such requests when filing an amended PAGA notice. The statute already provides a mechanism for the Agency to notify parties if it does not intend to conduct an investigation, and such notice effectively terminates the administrative review period for exhaustion purposes. (Lab. Code, § 2699.3, subds. (a)(2)(A), (c)(1)(D).)

Comment Summary No. 36: The Agency should provide clarification regarding the impact of amended PAGA notices on cure opportunities or procedures.

Comments Received From: LeadingAge (45D, 15D)

Response:

No action taken. This commenter seeks clarification regarding circumstances where an amended PAGA notice may trigger new cure opportunities. Regulation 17430, subdivision (b) states an eligible employer may submit a cure proposal to the Agency within 33 days after receiving a PAGA notice or an amended PAGA notice alleging violations or facts not included in an earlier PAGA notice. This provision is intended to ensure the availability of early dispute resolution procedures when an amended PAGA notice is filed adding new allegations, while appropriately limiting the availability of cure procedures in such circumstances to those newly alleged claims. This is necessary to ensure employers act promptly upon receiving notice of alleged Labor Code violations. As noted above (see Response to Comment Summary Nos. 32, 33), assessing whether newly alleged claims may be sufficient for purposes of triggering new cure opportunities often may involve fact-based inquiries and the Agency deems resolution of such issues more appropriately addressed on a case-by-case basis.

The commenter also seeks clarification regarding the impact of an amended PAGA notice on pending cure procedures. The Agency occasionally has encountered these types of situations. In such circumstances the Agency works with the parties to schedule conference proceedings in a manner appropriate to address all alleged violations subject to potential resolution, and regulation 17432 includes provisions allowing for the continuance of a cure conference as may be necessary in any matter. Because these situations often are tailored to the specific circumstances of any particular case, the Agency deems handling of such issues to be more appropriately conducted on a case-by-case basis.

The commenter also proposes that cure procedures be available to a party in the context of new violations alleged in an amended PAGA notice filed in the context of a proposed settlement (see reg. 17420.5, subd. (d). While the Agency presumes that parties who have reached or are in the process of finalizing a proposed settlement may not require recourse to cure procedures, the language of regulation 17430, subdivision (b) would allow access to cure procedures to the extent an amended PAGA notice includes new allegations not included in an earlier notice.

Comment Summary No. 37: Prohibiting, or adopting procedural safeguards concerning, amendments to PAGA notices in the context of settling PAGA claims.

Comments Received From: CBHA (45D); AAHOA (45D, H); Employers Group (45D); Fisher Phillips (45D); Retailers (45D); CRA (45D, H); CalChamber (45D, H);

CELA (45D); SEIU (45D, H, 15D); Klein (45D); Sentinel (45D); Moon (45D, 15D); Littler (H, 15D); Delicato Vineyards (H); California Wine Institute (H); Cogir Management (15D); Call & Jensen (15D); Non-Profit Coalition (15D)

Response:

See modifications to regulations 17420.5, subdivision (d), and 17450.5, subdivision (d). As originally proposed, these provisions would have prohibited the amendment of PAGA notices to add new violations as part of or after the parties reached a proposed settlement agreement in a pending PAGA lawsuit. This provision was intended to address abusive settlement practices, including "reverse auction" scenarios. Many commenters objected to this provision. Among these commenters, some stakeholders representing employers, as well as attorneys or law firms among those objecting to regulation 17415, generally asserted opposition to this prohibition and urged the Agency to withdraw it. Other commenters, including stakeholders representing both employers and employees, oppose a complete prohibition against the amendment of PAGA notices in the context of settling claims while offering suggestions to address the Agency's concerns regarding reverse auctions or other problematic practices in the context of settling claims.

With respect to the regulatory language as originally proposed, commenters expressed a number of concerns regarding a prohibition on amending PAGA notices in the context of pursuing settlement of PAGA litigation, including that the regulation was contrary to public policy under the law and the 2024 legislative reforms to facilitate the resolution of PAGA cases; would frustrate, impede, or otherwise obstruct efforts at achieving comprehensive, global resolutions; and would result in additional piecemeal litigation or an increased multiplicity of lawsuits, which would further result in delays and increased costs. Many commenters explain that new claims or issues often are identified during the course of litigation or even in the context of settlement discussions, and an outright prohibition on amending PAGA notices in the context of pursuing such settlements will frustrate efforts at achieving resolutions in such cases. Some commenters assert the prohibition usurped judicial oversight of proposed PAGA settlements. Other comments received asserted use of the term "proposed" in describing amendments in the context of reaching a "proposed settlement agreement" was vague and ambiguous.

At the outset, the Agency disagrees the term "proposed" as used in the regulation is vague or ambiguous in describing PAGA notice amendments in the context of reaching a "proposed settlement agreement." Any PAGA settlement is a "proposed" settlement unless and until approved pursuant to the statute, and the regulatory language tracks the language of the statute in this regard.

(Lab. Code, § 2699, subd. (s)(2).) The Agency thus declined to remove that term from the regulatory language.

However, upon considering the various objections received to the originally proposed regulation, and in a manner consistent with suggestions provided by some commenters, the Agency modified these regulations to allow amendments to PAGA notices in such circumstances subject to additional disclosure requirements. As modified, these provisions now allow for the amendment of PAGA notices to add new violations or parties as part of or at any time after the parties reach a proposed settlement agreement. In such circumstances, an amended PAGA notice must comply with specified additional disclosure requirements to facilitate identification of the newly alleged claims, the bases for them, and the scope of any investigation conducted as to the new claims. These provisions will aid the Agency's review of such amendments and provide appropriate safeguards necessary to ensure the claims are not being added for improper purposes, such as to broaden the scope of a release to encompass other claims not adequately or properly investigated or litigated.

Several commenters objecting to the originally proposed language express support for these modifications, including that it represents a balanced approach towards addressing concerns identified by the Agency while preserving pathways towards comprehensive resolutions of PAGA cases. Nevertheless, several commenters continue to object to these provisions, including on grounds amendments in the context of settling PAGA claims are not suspect and result in employees receiving more money; that concerns about multiple overlapping PAGA lawsuits should be addressed at earlier stages of proceedings; allowing late amendments will foster abusive practices involving "kitchen-sink" allegations; and that the regulations concerning amended PAGA notices conflict with the statute.

The Agency disagrees with the contentions of these objectors. Courts are cognizant of the concerns expressed by the Agency during this rulemaking with respect to late-filed amendments related to settlement efforts. (See ISOR Addend., App. Q [superior court ruling describing "troubling" and "commonplace settlement tactic" involving 11th-hour amendments, noting they "raise serious questions about whether the newly added claims were properly investigated"].) The assertion employees always receive more money as a result of 11th-hour amendments designed to facilitate broader settlements also is misguided. Reverse auction scenarios or other situations involving late-filed amendments for purposes of expanding the scope of released claims threaten serious harms to the state's and other aggrieved employees' interests by discounting and releasing such claims without sufficient safeguards to ensure the claims were properly investigated or valued. In response to concerns that

allowing late amendments will continue to encourage abusive settlement practices, the Agency finds the heightened notice requirements provide appropriate safeguards for ensuring any late-added claims are not improperly discounted or included solely for purposes of expanding the scope of any release.

With respect to the suggestion the Agency should address concerns implicated by situations involving a multiplicity of PAGA cases against a single employer at an earlier stage of proceedings, the Agency notes the statute does not prohibit multiple PAGA lawsuits against a single employer by different aggrieved employees, even if the claims in each overlap. It is expected parties in such circumstances properly will advise the courts in which such actions are pending of other related cases. (See Cal. Rules of Cout, rule 3.300(b).) To the extent other comments received suggest the Agency should dismiss or reject duplicative or overlapping PAGA notices against a single employer, the Agency rejects such proposals for similar reasons.

One commenter suggests the Agency prescribe a set period (e.g., 150 days) before any settlement approval hearing could be scheduled following the filing of an amended PAGA notice when there are multiple PAGA claims against the employer. The Agency declines to adopt such a proposal, and finds the periods set forth in the regulation clarifying the administrative exhaustion periods applicable to amended PAGA notices, coupled with the Agency review period for proposed settlements as described in regulation 17461, offer sufficient clarity and predictability in defining the timeframes in which actions may or may not occur.

Finally, objections that these regulatory provisions concerning amended PAGA notices conflict with the statute also are incorrect. As previously noted (see Response to Comment Summary No. 34), the statute is silent with respect to amended PAGA notices; it does not describe the required contents of an amended PAGA notice nor specify the timeframes applicable to review of amended PAGA notices. Accordingly, the regulations do not conflict with any statutory provision, but rather are an appropriate exercise of the Agency's rulemaking authority to adopt rules filling these statutory gaps and providing stakeholders clarity and guidance regarding commonplace practices under the law.

Investigations of Violations Alleged in PAGA Notices

Comment Summary No. 38: The Agency should allow employers the opportunity to respond to alleged violations.

Comments Received From: Santaluz (45D)

Response:

No action taken. This commenter requests the Agency adopt rules allowing employers an opportunity to respond to specific alleged violations. Both the statute and regulations provide such an opportunity. (Lab. Code, § 2699.3, subd. (a)(1)(B), (c)(1)(B), (c)(2), (c)(3); regs. 17421, 17430, 17440.)

Comment Summary No. 39: The Agency should require allegations be investigated if an employer files a response to a PAGA notice, or adopt a plan to require the investigation or handling of all PAGA cases by the Labor Commissioner's Office.

Comments Received From: LeadingAge (45D); CABIA (45D)

Response:

No action taken. Certain commenters suggest the adoption of rules requiring greater responsibility over the investigation or handling of PAGA cases by the Labor Commissioner's Office. One commenter proposes an investigation be required in any case where an employer files a response to a PAGA notice. Another commenter proposes the Agency adopt a plan to require the Labor Commissioner's Office take responsibility over all PAGA cases. The Agency declines to adopt these proposals. In addition to the reasons identified below, such proposals are inconsistent with or undermine the purpose of the law to allow the deputization of private parties to prosecute actions on behalf of the state and assist in enforcing Labor Code requirements.

The statute allows the Agency, including the Labor Commissioner's Office on its behalf and to whom administration of these components of the law have been delegated, wide discretion in determining whether to conduct an investigation in any PAGA matter. These suggested proposals would unduly impinge on the exercise of this discretion. Available staffing and resources also make such proposals impractical.

Further, there is no indication a particular case is more suitable for investigation based solely on the fact an employer responds to the PAGA notice. The Agency has observed many instances in which employers file responses solely for the purpose of objecting to the PAGA notice or denying the violations alleged. The statute does not allow the Agency to "dismiss" a PAGA notice upon making a determination no evidence exists to support an alleged violation. In any event, an employer's representation no violations exist would appear to render unnecessary the need for any Agency investigation for purposes of citing or prosecuting the employer. In circumstances where the Agency does not cite or

prosecute the employer, the statute authorizes the employee to file a lawsuit to prosecute the alleged violations directly.

Comment Summary No. 40: The Agency should adopt a self-audit program for employers under investigation and require employers to make employees whole for any wages determined to be owed.

Comments Received From: CABIA (45D)

Response:

No action taken. One commenter proposes the Agency adopt a program under which an employer subject to investigation by the Labor Commissioner's Office may conduct an audit of itself and make workers whole based on the findings of any such audit. The Agency declines to adopt this proposal. The proposal does not provide specifics in terms of how any such program would operate, including necessary oversight requirements. To the extent the proposal is designed to provide an avenue by which employers may correct alleged violations to resolve and preclude a potential PAGA lawsuit, such avenues already exist under subdivisions (c)(2) and (f) of Labor Code section 2699.3.

Comment Summary No. 41: The Agency should adopt an administrative procedure for employers to demonstrate, and the Agency determine the sufficiency of, reasonable compliance measures for purposes of reducing potential civil penalties.

Comments Received From: JSC (45D, H)

Response:

No action taken. One commenter requests the Agency adopt a prelitigation administrative procedure by which an employer may submit evidence to the Agency of reasonable steps taken to comply with applicable Labor Code requirements. As proposed, the process would allow the Agency to determine the sufficiency of such measures for purposes of applicable civil penalty reductions under subdivisions (g) or (h) of Labor Code section 2699. The Agency has determined not to adopt any such process here.

Subdivisions (g) and (h) of Labor Code section 2699 describe potential civil penalty reductions available to employers "[i]n any civil action" under PAGA. The Agency appreciates the basis for this proposal. However, the statute contemplates a showing of reasonable compliance steps for purposes of potential penalty reductions be made to a court in which a PAGA lawsuit is pending.

Comment Summary No. 42: The Agency should allow employers to request a stay of any pending PAGA litigation if the Labor Commissioner's Office elects to investigate, cite, or prosecute the employer after the expiration of statutory periods.

Comments Received From: Employers Group (45D)

Response:

No action taken. This commenter proposes the Agency adopt a process by which an employer could request a stay of any pending PAGA litigation in the event the Labor Commissioner's Office elected to commence an investigation after expiration of the statutory period. The Agency declines to do so. The statute does not contemplate or permit the commencement of an investigation after the periods allowed in subdivisions (a) and (c) of Labor Code section 2699.3, and an aggrieved employee seeking to pursue any claims in a PAGA notice filed with the Agency becomes deputized to pursue the claims after expiration of such periods. (Cf. *Turrieta v. Lyft, Inc*. (2024) 16 Cal.5th 664, 683, fn. 4 [finding the statute "expressly precludes" an aggrieved employee from bringing an action if the Agency has cited the same employer for the same violation]; *California Business & Industrial Alliance v. Becerra* (2022) 80 Cal.App.5th 734, 746-747 ["PAGA . . . prohibits the filing of any PAGA action 'on the same facts and theories' as a citation issued by the executive"].)

Comment Summary No. 43: Requests to clarify investigatory procedures applicable to health and safety violations, including impacts on subsequent or pending litigation.

Comments Received From: Employers Group (45D); Fisher Phillips (45D); Retailers (45D); CRA (45D, H); CalChamber (45D); LeadingAge (15D)

Response:

See modifications to regulation 17451, subdivision (d)(1). A number of commenters suggest proposals regarding various aspects of the statutory procedures applicable to health and safety violations. These comments generally seek guidance regarding the impact of a Cal/OSHA investigation on a potential or pending litigation matter or clarification that a PAGA lawsuit may not be commenced in circumstances where Cal/OSHA determines a PAGA notice is insufficient.

Language added to regulation 17451, subdivision (d)(1) codifies existing practice by which Cal/OSHA may inform a claimant that a PAGA notice is

insufficient while providing an opportunity to amend the PAGA notice to correct such deficiency. As a matter of law, a PAGA lawsuit may not be commenced in the absence of notice of the alleged violations in compliance with applicable statutory and regulatory requirements. Accordingly, the Agency does not find it necessary to restate this in regulation or to otherwise state that an employer may file pleading challenges to a PAGA notice in any subsequent lawsuit.

Labor Code section 2699.3, subdivision (b) describes the procedures generally applicable to the investigation of alleged health and safety violations, including the specific limitations and circumstances under which health and safety claims may be included in any subsequent PAGA lawsuit. Regulation 17451, subdivision (d) further clarifies the circumstances under which an alleged health and safety violation may be the subject of a subsequent PAGA lawsuit. These statutory and regulatory provisions are sufficient to identify when, and the circumstances under which, a PAGA lawsuit alleging health and safety violations may be filed. To the extent commenters seek guidance concerning the impact of any investigation on a pending litigation matter, the Agency finds such matters more appropriately addressed on a case-by-case basis in light of the specific facts and issues presented. Further, such questions would appear to be more appropriately raised to the court in which an affected matter is pending.

Regarding a proposed requirement Cal/OSHA provide case closure notifications to parties in all cases, the Agency notes the statute does not require such notices. (Lab. Code, § 2699.3, subd. (b).) The statute and regulation 17451 describe applicable investigation procedures for alleged health and safety violations in PAGA notices, including circumstances where Cal/OSHA may issue notices to parties. Both the statute and regulation also define procedures applicable in situations where Cal/OSHA does not conduct an investigation or inspection. (Lab. Code, § 2699.3, subd. (b)(2)(B); reg. 17451, subd. (d).) Accordingly, the Agency does not deem it necessary to require the issuance of specific closure notices in all cases beyond what the statute and regulation already require.

Cure Procedures

Comment Summary No. 44: Requests to expand, modify, or clarify the eligibility threshold for employers to participate in the small employer cure process.

Comments Received From: Holt (H); Brickhouse (45D); JSC (45D, H); CBHA (45D); LeadingAge (45D, H); Employers Group (45D); (CELA (45D); Health and Fitness Association (H)

Response:

No action taken. A number of commenters express general support for the Agency's regulations providing guidance and clarity regarding administrative cure procedures added by the 2024 legislative reforms. As it relates to "small employer" cure procedures for resolving the most common types of wage-and-hour claims alleged in PAGA notices, the statute limits participation to employers "that employed fewer than 100 employees in total" during the one-year period before a PAGA notice is filed. (Lab. Code, § 2699.3, subd. (c)(2)(A).)

Several commenters request or suggest proposals to increase, modify, alter, or clarify the eligibility threshold for small employers to pursue cure procedures administered by the Agency under Labor Code section 2699.3, subdivision (c)(2). Regulation 17430, subdivision (c) appropriately codifies the eligibility threshold for participation in this process, including by requiring inclusion of all employees employed by the employer regardless of exempt or non-exempt status or term or location of employment. The Agency declines to adopt any calculation methodology allowing for the expansion of this threshold or otherwise limiting the number of employees to be counted for purposes of determining eligibility. The statute contemplates all employees employed by the employer during that one-year period are counted. Employers exceeding the eligibility threshold are not without recourse, and instead may elect to pursue alternative resolution procedures available under the statute. (Lab. Code, § 2699.3, subd. (f).)

One commenter seeks greater clarification regarding calculations of the total number of employees in joint employer contexts. However, such inquiries often involve consideration of various factors and fact-specific analyses in a given case. The Agency has determined such inquiries more appropriately are evaluated or handled on a case-by-case basis rather than a broader rule attempting a one-size-fits-all approach. The commenter suggests the Agency adopt a procedure allowing for an employer to rebut an eligibility determination. Current Agency practice already allows for consideration of an employer's position when addressing these issues based on the specific circumstances presented on a case-by-case basis where issues of joint employment may be implicated. The Agency is entitled to finality in its determinations in this regard, and the statutory process does not contemplate employer appeals at any stage. (Lab. Code, § 2699.3, subd. (c)(2).) Moreover, as noted, an employer determined to be ineligible for this process is not without recourse, and alternative resolution procedures remain available. (Lab. Code, § 2699.3, subd. (f).)

Comment Summary No. 45: Request to clarify that participation in the small employer cure process cannot be used to prove an employer's liability.

Comments Received From: CBHA (45D)

Response:

No action taken. This commenter expresses concern an employer's participation in the cure process may be construed by a claimant as an admission of liability of Labor Code violations. Labor Code section 2699.3, subdivision (c)(2)(E) states any cure or cure proposal is deemed a confidential settlement communication and may not be deemed an admission of liability. (See also Stats. 2024, ch. 45, § 4 [Sen. Bill No. 92 (2023-2024 Reg. Sess.) § 4] ["Preserving the confidentiality of statements presented during settlement negotiations, neutral evaluation of claims, or assessments of attempts to cure violations pursuant to this act is necessary to facilitate early resolution of claims and encourage employers to take prompt action to make aggrieved employees whole"].) The regulations codify these protections. (Regs. 17430, subd. (e), 17433, subd. (e), 17434, subd. (a).) Accordingly, the Agency finds both the statute and regulations provide appropriate protections in this regard.

Comment Summary No. 46: Allegations that the small employer cure process denies employees adequate access to employer records and denies employees a fair opportunity to respond or participate in the process.

Comments Received From: Blackstone (H); Holmes (H)

Response:

No action taken. These commenters contend the cure process deprives an employee an ability to conduct discovery or adequate access to an employer's records. The statute does not provide any right of discovery during this prelitigation early resolution process. (Lab. Code, § 2699.3, subd. (c)(2).) In any event, regulation 17433, subdivision (b) requires employers to file a preconference statement with the Agency before a cure conference is conducted, including the obligation to produce records requested by the Agency. Subdivision (d) requires service of these materials on the claimant. While circumstances may vary on a case-by-case basis depending on the nature of the claims at issue, in typical cases involving alleged wage-and-hour violations the Agency generally requires production of time and payroll records for allegedly aggrieved employees during a defined period of time (e.g., one year). Regulation 17435 describes the requirements for an employer submitting notice it has completed cure actions either agreed to by the parties or as prescribed by the Agency, and subdivision (a) specifically requires notice of the completed cure be accompanied by records as set forth in the cure plan. In this regard, the statute also requires the production of records supporting the employer's cure notice. (Lab. Code, § 2699.3, subd. (c)(2)(C).) Accordingly, the process affords an employee ample access to an employer's records for

purposes of evaluating an employer's proposed cure and the sufficiency of any completed cure actions.

Comments that the cure process denies an employee an adequate opportunity to respond also are unpersuasive. Again, an employer is required to produce records to a claimant before a cure conference is held, and the claimant is permitted the opportunity to respond. (Reg. 17433, subd. (c).) The claimant and their counsel also may attend the cure conference. (Lab. Code, § 2699.3, subd. (c)(2)(B); regs. 17432, 17434.) The claimant also may dispute the sufficiency of any cure actions taken by an employer. (Lab. Code, § 2699.3, subd. (c)(2)(D); reg. 17437.) These procedures largely reflect a codification of the Agency's current practices administering cure proceedings, and the Agency finds them to be sufficient. In sum, the statute and regulations afford an employee ample opportunity to participate or respond during this process.

Comment Summary No. 47: The Agency should require heightened evidence or support when an employee disputes the sufficiency of a cure proposal where more than one location is involved.

Comments Received From: Employers Group (45D)

Response:

No action taken. Regulation 17433, subdivision (c)(1) requires an employee who disputes the sufficiency of an employer's cure proposal to state in a preconference statement "the factual basis . . . accompanied by any evidence upon which the claimant relies in making such an allegation." This commenter recommends in situations where a cure involves more than one work location that the Agency require the claimant support any dispute with facts and any evidence relied upon. The regulation, as drafted, already requires an employee support any sufficiency dispute with an articulation of the factual basis and supporting evidence. The Agency finds the regulation sufficient to address this issue and does not find any further proof requirement to be necessary.

Comment Summary No. 48: The Agency's determination of a sufficient cure should be binding on a claimant.

Comments Received From: JSC (45D)

Response:

No action taken. This commenter asserts employers may be reluctant to use the cure process if the claimant is required to approve an employer's cure. However, there is no requirement an employee approve an employer's cure

proposal, a cure plan prepared by the Agency, or an employer's notice of cure completion. (Regs. 17434, 17436.) While the Agency endeavors to aid parties in reaching a mutually agreeable resolution in all cases, such mutual agreement is not always achievable. In such circumstances, regulation 17434, subdivision (c)(2) allows the Agency to prepare a cure plan for the employer based on the Agency's determination of the measures necessary to constitute a sufficient cure for an alleged violation. (See Lab. Code, §§ 2699, subd. (d)(1), 2699.3, subd. (c)(2)(B).) Accordingly, neither the statute nor the regulation require claimant approval or adoption of the Agency's position regarding the sufficiency of a cure. To the extent the commenter suggests a claimant should not be allowed to dispute a cure determined by the Agency to be sufficient, the statute expressly allows a claimant such opportunity. (Lab. Code, § 2699.3, subd. (c)(2)(D); see reg. 17437.)

Comment Summary No. 49: Allowing an employee 10 days to dispute an Agency cure determination is insufficient.

Comments Received From: SEIU (45D)

Response:

No action taken. Regulation 17437, subdivision (b) requires an employee who disputes the sufficiency of a cure verified by the Agency to submit a hearing request to dispute such determination within 10 days after the date the Agency issues its determination. This commenter asserts 10 days is insufficient time to dispute the sufficiency of an employer's cure. The Agency disagrees.

The statute requires a hearing requested by a claimant be scheduled within 30 days of the Agency's determination. As previously explained during the course of this rulemaking, the 10-day filing deadline is necessary to accommodate other statutory deadlines and is consistent with the statutory framework establishing an expedited process. Further, the Agency notes the employee receives the employer's cure notice and supporting documents at the same time as the Agency. The Agency is required to issue a determination verifying the employer's cure within 20 days. (Lab. Code, § 2699.3, subd. (c)(2)(C).) Thus, the employee actually has 30 days to review the employer's cure submission before the deadline to dispute the sufficiency of any cure verified by the Agency. The Agency finds this is sufficient time to permit the employee a fair opportunity to review and assess an employer's cure, and, in fact, is more time than the Agency is allowed. This 10-day requirement further reflects a codification of current Agency practice, and based on such experiences the Agency finds it sufficient.

Comment Summary No. 50: Define who at the Labor Commissioner's Office will conduct cure hearings.

Comments Received From: LeadingAge (45D)

Response:

No action taken. This commenter suggests regulation 17439, subdivision (a) is vague in stating a cure hearing will be conducted by "a deputy or agent of the Labor Commissioner's Office." The commenter seeks to ensure hearings are conducted by qualified individuals. With respect to internal casehandling procedures, the Labor Commissioner's Office has authority and discretion concerning the assignment of cases. There is nothing to suggest an unqualified individual within the Labor Commissioner's Office would be assigned to conduct cure hearings. The regulatory language is consistent with statutes regarding the Labor Commissioner's authority. (Lab. Code, § 92; see also, e.g., *id*., §§ 226.5, subd. (a), 1023, subd. (a), 1286, subd. (d), 1289, subd. (a), 2681, subd. (b).)

Comment Summary No. 51: The assertion that cure hearings should not be handled by the Labor Commissioner's Office.

Comments Received From: CRLA (45D)

Response:

No action taken. This commenter expresses concern regarding the ability of the Labor Commissioner's Office to conduct cure hearings, including based on available resources and existing workload. The Agency is tasked with the administration of PAGA. (See Lab. Code, §§ 2699, 2699.3.) Pursuant to its authority under Government Code section 15560, the Secretary of LWDA delegated much of the administration of PAGA to the Department of Industrial Relations (DIR) starting in fiscal year 2013-2014. In turn, DIR delegated many of the responsibilities involved in the administration of PAGA to the Division of Labor Standards Enforcement, also commonly known as the Labor Commissioner's Office. (Lab. Code, § 55.) The Labor Commissioner's Office is responsible for enforcing the wage-and-hour provisions of the Labor Code and other employment laws. (Lab. Code, §§ 82, 83, 95.) The Labor Commissioner's Office is comprised of various divisions responsible for different areas or aspects of the law. One of these units consists of personnel dedicated to administering those aspects of PAGA falling within its jurisdiction, and the Labor Commissioner's Office is authorized to assign matters in a manner that promotes the efficient administration of its responsibilities.

As relevant here, Labor Code section 2699.3, subdivision (c)(2)(D) establishes a hearing procedure to review preliminary cure determinations issued by the Agency. To avoid potential concerns with the Agency reviewing its own determinations, it is appropriate to assign the cure hearing function to a separate entity. Such functions already have been delegated to the Labor Commissioner's Office. Since these cure procedures became effective in 2024, the Labor Commissioner's Office has received only two cure hearing requests that resulted in a hearing being held.

Comment Summary No. 52: Employers should be required to provide information concerning all employees for the three-year period preceding a PAGA notice to allow an employee to assess the sufficiency of a cure.

Comments Received From: CRLA (45D)

Response:

No action taken. A cure involving a payment obligation encompasses a period going back three years before the filing of a PAGA notice. (Lab. Code, § 2699, subd. (d)(1).) Regulation 17435, subdivision (b) requires an employer serve the employee a copy of its cure notice and all supporting records, including required payroll and payment records demonstrating completion of the cure. (Lab. Code, § 2699.3, subd. (c)(2)(C).) Accordingly, the statute and regulations already provide for production of records to the employee.

Comment Summary No. 53: The Agency should require employers to provide notice to employees receiving cure payments of case information and payment explanations, including the ability to contact the Agency in the event of a dispute.

Comments Received From: CRLA (45D)

Response:

No action taken. As a matter of practice, the Agency regularly requires in cure plans it prepares that employer cure payments to employees include itemizations explaining the payments and their purposes. The Agency finds this practice of describing payment and itemization obligations in specific cases appropriately is handled on a case-by-case basis during the preparation of a cure plan. (See reg. 17434, subd. (c).) The Agency does not find it necessary to require an employer to additionally produce specific case or Agency contact information to all employees. The statute allows only the claimant to dispute a cure and request a hearing, and the claimant acts as representative of all other

employees included in the PAGA notice. (See Lab. Code, § 2699.3, subd. (c)(2)(D).)

Comment Summary No. 54: The Agency should require an employer to provide notice to the Labor Commissioner's Office if a cure would extinguish any worker's pending wage claim.

Comments Received From: CRLA (45D, H)

Response:

No action taken. A cure under the statute resolves claims for civil penalties under PAGA. While a cure necessarily involves the payment of wages owed to aggrieved employees, and a cure payment arguably can be used to offset a later recovery by an individual worker, a PAGA cure by itself will not automatically operate to extinguish any worker's pending wage claim.

Comment Summary No. 55: The Agency should provide guidance concerning the handling of uncashed or returned cure payments.

Comments Received From: CRLA (45D, H)

Response:

No action taken. The Agency's current practice is to include provisions in a cure plan ensuring required cure payments do not revert to an employer in the event an employee owed payment pursuant to a cure cannot be located or for whom a check constituting payment for wages or other money owed is returned as undeliverable. This includes instructions on transmitting funds to the State Controller's Unclaimed Property Fund in the name of the employee to whom the funds are owed. Such terms are common in PAGA settlements. (See Super Ct. L.A. County, Model PAGA Settlement, ¶ 4.4.3, available at <https://www.lacourt.ca.gov/pages/lp/civil/tp/civil-case-types-and-specialty-courtrooms/cp/complex-civil-litigation> [as of Oct. 20, 2026].) Separate legal obligations already dictate an employer may not retain funds owed to an employee, and the Agency finds articulation of these obligations appropriately is addressed in a cure plan consistent with current practice.

Comment Summary No. 56: The Agency should allow a claimant to attend conferences by telephone or by means other than videoconference.

Comments Received From: CRLA (45D)

Response:

No action taken. The statute allows cure conferences to be conducted electronically, telephonically, or in person. (Lab. Code, § 2699.3, subd. (c)(2)(B).) Regulation 17432, subdivision (c) states a notice scheduling a cure conference will advise whether the conference will be conducted by videoconference, teleconference, or in person. The regulation also includes instructions to parties requesting to conduct the conference via alternative means. Accordingly, the regulations already allow participation in a cure conference via telephone.

Comment Summary No. 57: The Agency should allow all workers affected by a cure proposal to attend cure conferences.

Comments Received From: CRLA (45D)

Response:

No action taken. Participation in cure conferences is limited to the parties, i.e., the claimant, the employer, and their respective counsel, if any. (See Lab. Code, § 2699.3, subd. (c)(2)(B).) The claimant acts in a representative capacity on behalf of other allegedly aggrieved employees; thus, the interests of the other employees already are represented. Allowing participation by other allegedly aggrieved employees would result in inefficiencies and not be conducive to an expedited administrative process designed to achieve resolutions within the limited periods provided by statute. Further, private mediations of PAGA claims generally do not involve or contemplate the participation of other affected employees.

Comment Summary No. 58: The Agency should allow more than three days for an employer to correct a deficiency in an initial wage statement cure notice.

Comments Received From: CRA (45D)

Response:

No action taken. In circumstances where an employee disputes the sufficiency of an employer's actions in curing a wage statement violation, regulation 17442, subdivision (b) states the Agency may provide the employer three additional business days to complete the cure. This commenter states this time is insufficient and suggests a longer period be allowed. The regulation incorporates the period allowed under statute. (Lab. Code, § 2699.3, subd. (c)(3)(B).)

Comment Summary No. 59: Allowing an employee 14 days to dispute an employer's wage statement violation cure notice is insufficient.

Comments Received From: SEIU (45D)

Response:

No action taken. Regulation 17441, subdivision (a) allows an employee 14 days to file with the Agency notice of a dispute regarding an employer's purported wage statement cure. This commenter suggests 14 days is insufficient.

The statute allows an employee the opportunity to dispute an employer's wage statement cure notice but does not state when a dispute must be filed. (Lab. Code, § 2699.3, subd. (c)(3)(B).) The wage statement cure process set forth in Labor Code section 2699.3, subdivision (c)(3) is an expedited process designed to address technical violations of wage statement itemization requirements under section 226, subdivision (a). (See Lab. Code, § 2699, subd. (d)(2).) This is not a process for resolving substantive underlying wage claims (e.g., the amount of wages earned by an employee); rather, it is a process for resolving violations of itemization requirements involving the information that must be included in wage statements an employer issues its employees. Regulation 17440, subdivision (b) describes the requirements of an employer's notice it has cured an alleged wage statement violation, including that the notice include a declaration describing "with specificity" the actions taken by the employer accompanied by supporting evidence. The Agency finds 14 days is sufficient time for an employee to review an employer's cure notice and supporting documents to determine whether to dispute the employer's cure.

Comment Summary No. 60: Statements that producing wage statements as part of a cure may be burdensome and disclose private information.

Comments Received From: JSC (45D); Fisher Phillips (45D)

Response:

No action taken. These commenters express concern that an administrative requirement that employers produce wage statements to the Agency and a claimant as part of a cure may be burdensome and expose sensitive personal information.

Regulation 17440, subdivision (b) describes the requirements of an employer's notice it has cured a wage statement itemization violation. For a cure providing an employer's correct name and address (Lab. Code, § 226, subd. (a)(8)), only a copy of the notice issued to employees providing that correct information is

required; an employer is not required to re-issue or produce actual wage statements. (Lab. Code, § 2699, subd. (d)(2)(A).)

For violations of other itemization requirements, the statute requires an employer issue compliant wage statements to all aggrieved employees. (Lab. Code, § 2699, subd. (d)(2)(B).) However, the regulation requires the employer to provide to the Agency and the claimant only copies of the wage statements issued to the claimant. The regulation does not require production of all wage statements issued to all employees. (The cure notice also must include a declaration from an individual with personal knowledge attesting to the cure actions, accompanied by a copy of any notice or correspondence to other employees regarding the compliant wage statements being issued or made available to them.) Accordingly, the Agency finds this is not a burdensome obligation to require an employer to produce to the Agency only corrected wage statements issued to the claimant.

In addition, regulation 17412 requires the redaction of private information included in submissions to the Agency. Accordingly, any concern about disclosure of third-party personal information is unwarranted and already addressed in the regulations.

Settlement Oversight

Comment Summary No. 61: Support for stronger oversight by the Agency.

Comments Received From: Brickhouse (45D); Simantob (45D); Non-Profit Coalition (45D); CELA (45D, H); SEIU (45D, 15D); Jake Darin (H); James Correa (15D); CABIA (15D)

Response:

See modifications to regulation 17461, subdivision (a). The Agency received many comments from stakeholders representing both employers and employees expressing support for regulation 17461 governing Agency reporting and review requirements in the context of settling PAGA lawsuits. Commenters express the regulation adds much needed guidance and transparency regarding settlement reporting and review procedures, noting the statute does not provide such guidance and courts have adopted inconsistent approaches in reviewing PAGA settlements. Comments received by the Agency express support for stronger Agency oversight of proposed PAGA settlements, including on grounds it will better protect the state's and other employees' interests at the expense of efforts to prioritize individual recoveries and thereby produce better outcomes for all parties. Relatedly, some commenters also express concerns regarding problematic or abusive settlement practices by some law firms and

attorneys and their impact on the plaintiff bar more generally, and support the Agency's efforts to provide greater guidance and oversight in this area. One commenter expressed support for the requirement in subdivision (e) of the regulation that parties include a copy of the regulation with their submission to the court seeking approval of a proposed settlement agreement while additionally attesting to compliance with it.

One commenter suggested the Agency clarify the intent of the regulation as aiding the Agency's review of proposed PAGA settlements for purposes of determining whether to support or object to a proposed settlement. The Agency added such language in subdivision (a) of regulation 17461. Another commenter requests the Agency state the materials described in regulation 17461, subdivision (a) are required in all cases, and further requests the Agency periodically publish data concerning PAGA settlements. In this regard, the Agency finds the regulation, as drafted, already requires submission of the described materials in all circumstances involving the proposed settlement of a civil action asserting PAGA claims. Additionally, proposed settlements and court orders approving settlements are publicly available using the PAGA Case Search Web site.

The Agency notes other commenters express concerns that regulation 17461 is inconsistent with the statute and applicable case law; will frustrate efforts to resolve PAGA lawsuits; will result in increased litigation, costs, and delays; and that judicial oversight of PAGA settlements as currently provided under the statute is sufficient to address the Agency's concerns as previously identified during this rulemaking process. The Agency disagrees with these various assertions, as addressed specifically in the responses that follow. To the extent some commenters argue regulation 17461 is inconsistent with the statute, the Agency disagrees. As other commenters note, Labor Code section 2699, subdivision (s)(2) is silent with respect to administrative procedures governing the Agency's review of proposed PAGA settlements. Accordingly, regulation 17461 is an appropriate exercise of the Agency's rulemaking authority under section 2699, subdivision (u).

Comment Summary No. 62: Requiring a party submit to the Agency a noticed motion and supporting materials filed with the court when seeking approval of a proposed PAGA settlement.

Comments Received From: CELA (45D)

Response:

See modifications to regulation 17461, subdivision (a)(2). As originally proposed, this provision would have required a party submitting a proposed settlement

agreement to the Agency to include a copy of the "motion or other request" filed with the court. This commenter expressed concerns the language would impermissibly allow parties to pursue settlement approval via stipulation. The Agency's intention was not to condone a practice of seeking PAGA settlement approvals via stipulation—a practice the Agency has observed and finds frustrates the purpose and intent of the administrative submission obligation under Labor Code section 2699, subdivision (s)(2). Accordingly, the Agency modified this provision to clarify that a noticed motion with the court must be submitted to the Agency.

Comment Summary No. 63: The 45-day period allowed for Agency review of proposed settlements.

Comments Received From: JSC (45D); Simantob (45D); LeadingAge (45D); Non-Profit Coalition (45D); Employers Group (45D); CRA (45D, H); CalChamber (45D); CELA (45D)

Response:

No action taken. Regulation 17461, subdivision (c)(1) states the Agency shall be provided 45 days to review any proposed settlement submitted to a court for approval and that parties shall not voluntarily consent to scheduling an approval hearing with the court that would provide the Agency less time. Some commenters express support for these provisions (see also Response to Comment Summary No. 61), including on grounds it furthers the Agency's oversight role under the law, increases transparency, will serve as a deterrent to reverse auctions or other problematic settlement practices, and will produce better outcomes in terms of protecting the interests of the state and other affected employees. Other commenters object to this provision and contend it will result in delays and interfere with the authority of courts to manage their own dockets.

The regulation does not interfere with the authority of courts to manage their own dockets. Rather, the regulation is directed to the conduct of the parties, providing the parties should not voluntarily schedule approval hearings on timelines that afford the Agency less than 45 days to review a proposed settlement. This is necessary to ensure the Agency is provided sufficient opportunity to review a proposed settlement. (See *Haralson v. U.S. Aviation Services Corp*. (N.D. Cal. 2019) 383 F.Supp.3d 959, 971 ["[a] party seeking approval of a PAGA settlement must simultaneously submit the proposed settlement to the [LWDA] to allow the LWDA to comment on the settlement if the LWDA so desires"], quoting *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal., Aug. 25, 2017) 2017 WL 3670794, *3; *Boddie v. Signature Flight Support Corporation* (N.D. Cal., June 28, 2021) 2021 WL 2651369, *5 ["the LWDA must be

afforded an opportunity to review a proposed PAGA settlement"].) Notwithstanding a request by the parties to schedule an approval hearing at a later date, a court retains authority to schedule a sooner hearing at its discretion should circumstances warrant.

The Agency does not find this provision will result in any undue delay in the settlement approval process. Most courts generally require that approval of proposed settlements in PAGA cases be sought by noticed motion and the scheduling of a hearing. Even assuming an approval motion was permitted to proceed on the shortest time generally allowed in typical law and motion practice (see Code Civ. Proc., § 1005, subd. (b)), the earliest hearing date that could be scheduled—assuming personal service and no intervening holidays—would be about 22 calendar days after filing with the court. Of course, service by electronic mail, overnight mail, regular mail, or other means will extend that period. The Agency finds any slight delay applicable in these circumstances imposes no prejudice or burden on the parties. To the extent there is any, it is outweighed by the Agency's, the employees', and the public's interest in ensuring appropriate oversight and review of proposed PAGA settlements consistent with the purposes and policies of the law.

Comment Summary No. 64: Notice of a proposed settlement to other PAGA plaintiffs.

Comments Received From: JSC (45D); CBHA (45D); LeadingAge (45D, 15D); Fisher Phillips (45D); Retailers (45D); CRA (45D); CalChamber (45D, 15D); CELA (45D); SEIU (45D, 15D); Delicato Vineyards (H); Littler (15D); Alsco-Geyer Irrigation (15D); Buena Vista Business Services (15D); MB Holdings (15D)

Response:

See modifications to regulation 17461, subdivision (b)(1). Regulation 17461, subdivision (b)(1) requires a plaintiff proposing to settle PAGA claims provide notice to other plaintiffs pursuing PAGA actions against the same employer. Some commenters support this requirement as an appropriate measure for strengthening the Agency's review of proposed settlements while providing appropriate safeguards and deterrents against abusive settlement practices, including reverse auction situations. Other commenters object to these provisions and assert such a notice requirement conflicts with existing law and will result in delays, increased litigation, and less resolutions.

As originally proposed, the regulation required notice of a proposed settlement be provided to all persons with actions pending against the same employer, including individuals who have filed PAGA notices against the employer but not actual PAGA lawsuits. Some commenters sought clarification and modification

in this regard. Upon further consideration the Agency agrees the notice obligation appropriately should be limited to other PAGA plaintiffs with lawsuits actually pending against the employer at the time. These individuals are more likely to have devoted time and resources pursuing and investigating such claims, and thus they are better situated to inform or alert the Agency to potential concerns a proposed settlement is not fair, adequate, and reasonable. (Reg. 17461, subd. (c)(2).) Accordingly, the Agency modified regulation 17461, subdivision (b)(1) to require notice of a proposed settlement be provided only to plaintiffs with PAGA lawsuits pending against the employer. This additionally will reduce or eliminate the need for reliance on the public PAGA Case Search Web page—a concern expressed by some commenters—which may in some situations not produce entirely accurate information if party names or case information are incorrectly entered or if parties have not complied with all applicable filing or reporting obligations (see Lab. Code, § 2699, subd. (s); reg. 17410).

The regulation also requires a settling plaintiff to provide the notice to all applicable PAGA plaintiffs, with an additional requirement an employer verify the list of persons entitled to notice. Some commenters propose the employer, not the plaintiff, should be required to provide the notice. These commenters suggest the employer is best positioned to provide such notice because it will have greater knowledge or awareness of other lawsuits filed against it. The Agency finds a requirement the employee provide such notice is consistent with the statutory provisions directing a plaintiff—deputized to pursue PAGA claims on behalf of the state as provided under the law—to undertake this responsibility alongside other administrative reporting obligations owed by the plaintiff to the Agency. (Lab. Code, § 2699, subd. (s).) In doing so, the Agency further finds the notice obligation as prescribed by subdivision (b)(2) is a minimal one. Moreover, the regulation requires an employer verify the list of other PAGA plaintiffs entitled to notice of the proposed settlement agreement. Accordingly, this information easily can be conveyed to the plaintiff for purposes of providing the required notice. The Agency further notes this information should be easily accessible or already known to the parties. (See, e.g., Cal. Rules of Court, rule 3.300 [notices of related cases].) For these reasons, the Agency further declines suggestions that the Agency undertake the notice obligation owed to other PAGA plaintiffs.

Some commenters request the Agency adopt a "good faith" or other "safe harbor" provision concerning the employer obligation to verify the list of other PAGA plaintiffs entitled to notice of a proposed settlement agreement. According to these commenters, an employer may not always be aware of all lawsuits pending against it. The Agency finds an employer is the party most likely to be aware of the lawsuits filed against it, and that this information generally should be readily accessible to the employer. In any event, the Agency finds such a requirement as proposed to be unnecessary. Provisions of law requiring

the certification or verification of information generally contemplate or allow for the presentation of all such information as true based on the knowledge, information, and belief of the individual providing it. (See, e.g., Code Civ. Proc., §§ 128.7, 446.)

Certain commenters express concern the requirement of conveying notice of a proposed PAGA settlement by email may result in disclosure of employees' personal email addresses. But the regulation does not require or contemplate notice to all potentially affected aggrieved employees. Rather, notice is required only to other PAGA plaintiffs with pending litigation against the same employer. These parties typically will be represented by counsel, and thus the notice will be directed to them. To the extent any individual is pursuing PAGA claims in pro per, court filing rules require the individual's email address be provided. (Cal. Rules of Court, rule 2.111(1).)

The Agency disagrees with concerns expressed by some commenters that the notice requirement will result in delays and added costs. The notice requirement does not add time to the settlement review and approval process, and the Agency does not find the 45-day review period provided under subdivision (c)(1) of the regulation will result in any actual delay or prejudice to parties. (See Response to Comment Summary No. 63.) And, as noted above, the notice obligation is a minimal one; the form and content of the notice are specifically set forth in the regulation and are simple and straightforward. (Reg. 17461, subd. (b)(2).)

Some commenters assert the notice requirement under subdivision (b)(1) should be limited only to other PAGA plaintiffs with claims that actually overlap with the claims asserted in the case proposed to be settled. The Agency declines to adopt such a limitation. Many commenters—including commenters requesting this type of limitation here—separately objected to the Agency's proposed rule prohibiting the amendment of PAGA notices in the context of settling cases on grounds that claims often develop, or that new claims are discovered, during the course of litigation or settlement efforts. (See Response to Comment Summary No. 37.) Such contentions warrant against the type of limitation urged here. Moreover, it is appropriate to require notice of a proposed settlement to all other PAGA plaintiffs with pending litigation against the same employer rather than limit the scope of the notice to the potentially self-interested limitations of the parties seeking approval of a settlement.

As an alternative to these regulatory notice provisions, one commenter suggests a requirement a PAGA plaintiff certify there are no other pending matters involving the same claims against the same employer when filing a PAGA notice—the precursor to a PAGA lawsuit. According to the commenter, monitoring of overlapping claims may be more effectively exercised at the

beginning of a case rather than at the settlement phase. However, the statute does not foreclose multiple actions against a single party (see Response to Comment Summary No. 37), and, as many commenters have argued, the scope of a PAGA case often is subject to development or expansion during the course of subsequent litigation. Accordingly, similar to the reasons described above, the Agency finds the regulatory notice requirement as set forth will be most effective in communicating to other potentially affected plaintiffs that related or overlapping PAGA claims against the same employer are subject to a proposed settlement. To the extent there are no other potentially affected cases, subdivision (a)(5) provides the parties may state that fact in the submission to the Agency.

Next, a number of commenters assert the notice requirements of subdivision (b) are contrary to governing law. Specifically, these commenters assert the notice requirement here violates or is inconsistent with *Turrieta v. Lyft, Inc*., *supra*, 16 Cal.5th 664. The California Supreme Court in that case concluded PAGA plaintiffs lacked authority to formally intervene in other PAGA lawsuits, including for the purpose of objecting to a proposed settlement. (*Id*. at p. 705.) But the Court recognized plaintiffs may inform or submit comments to the Agency to express concerns about proposed settlements, and the Agency may submit comments to a court. (*Id*. at pp. 707-708.)

Contrary to the suggestions of some commenters, the regulation does not create intervention rights or authorize plaintiffs to file comments in other PAGA cases (although the Court recognized they may do so and that trial courts retain discretion to consider them). (*Turrieta*, *supra*, 16 Cal.5th at p. 707.) Thus, the regulation does not create any rights or obligations rejected or disapproved in *Turrieta*. One commenter questions whether the Agency has authority to formally intervene in any pending PAGA lawsuit after exhaustion of the prelitigation 65-day review and 120-day investigation periods. At the outset, the Agency—the real party in interest in any PAGA lawsuit—disputes such a contention. (*California Business & Industrial Alliance*, *supra*, 80 Cal.App.5th at p. 748 [the "obvious purpose" of the statutory requirement a proposed settlement be submitted to the Agency is to allow intervention "to protect the state's interest"].) In any event, there is no dispute the statute affords the Agency a role in the review of proposed PAGA settlements and that the Agency may file comments in court.

The Agency further finds increased notice and disclosures concerning PAGA settlements will aid both courts and the Agency in reviewing proposed settlements, and to that end should result in more robust review procedures, capabilities, and efficiencies, while further advancing the interests of both the state and other affected workers in ensuring settlements are fair, adequate, and reasonable. Indeed, several commenters supporting the regulation assert it

creates more transparent and robust oversight procedures to ensure fair resolutions and better outcomes in PAGA cases.

Finally, some commenters assert these regulatory notice requirements will result in increased litigation and less settlements. It is unclear to the Agency how. The regulation does not grant intervention rights to plaintiffs in pending court proceedings. The regulation does not affect the ability of plaintiffs to file comments in other PAGA cases concerning proposed settlement agreements, which trial courts have discretion to consider as the Court in *Turrieta* acknowledged. Assuming parties comply with applicable litigation requirements, separate plaintiffs with claims against the same employer likely already should be aware of each other and developments in their respective cases, including when one of them is subject to a proposed settlement agreement. (See Cal. Rules of Court, rule 3.300.)

The contention the regulation will result in less settlements also is unfounded and unpersuasive for similar reasons. If anything, the regulation will result in greater efficiencies in the review and oversight of proposed PAGA settlements by establishing a formal procedure by which plaintiffs may submit comments to the Agency for consideration.

Comment Summary No. 65: Comments submitted to the Agency concerning a proposed PAGA settlement agreement, and the Agency's review or consideration of them.

Comments Received From: JSC (45D); CBHA (45D); LeadingAge (45D, 15D); Fisher Phillips (45D); Retailers (45D); CRA (45D); CalChamber (45D, 15D); CELA (45D); SEIU (45D, 15D); Delicato Vineyards (H); Littler (15D)

Response:

No action taken. Regulation 17461, subdivision (c)(2) allows PAGA plaintiffs potentially impacted by a proposed PAGA settlement agreement to submit written comments to the Agency within 21 days after receiving notice of the proposed settlement provided by the settling plaintiff pursuant to subdivision (b). As noted above, some commenters express support for provisions formalizing a process by which PAGA plaintiffs potentially impacted by a proposed settlement in another case may submit comments to the Agency concerning their positions regarding the proposed settlement. However, other commenters oppose this comment process or offer suggestions to modify certain aspects of it.

As noted above (see Response to Comment Summary No. 64), a number of commenters oppose the notice and comment requirements under regulation

17461, subdivisions (b) and (c) on grounds they are inconsistent with or violate the California Supreme Court's decision in *Turrieta*. For the reasons previously stated, the Agency finds these arguments lack merit.

Additionally, some commenters contend this process for allowing PAGA plaintiffs to submit comments to the Agency regarding a proposed PAGA settlement will result in delays, increased costs, more litigation, and less resolutions. Again, the Agency finds these contentions also lack merit and are unpersuasive. (See Response to Comment Summary Nos. 63, 64.) To be clear, allowing PAGA plaintiffs to submit comments to the Agency will not result in any litigation delays, undue burdens, or prejudice to parties proposing to settle a PAGA lawsuit. Nor will the Agency receiving comments from potentially impacted PAGA plaintiffs result in increased costs or litigation. To the contrary, these procedures should result in less litigation processes by establishing a formal channel by which parties may submit comments to the Agency regarding a proposed settlement agreement. While parties may file comments with the court, and the court retains discretion whether to consider them, establishing a formal administrative comment process, if anything, will result in less litigation filings and more streamlined judicial and administrative settlement oversight procedures.

Beyond the above objections to the comment submission procedure under subdivision (c)(2), some commenters offer proposed suggestions to modify aspects of this provision.

One commenter requests the Agency adopt a provision stating any comments received by the Agency be deemed "persuasive" or "advisory" only. The Agency finds this suggestion inaccurately reflects the nature and purpose of the comment process and otherwise is unnecessary. The purpose of the comment process is to aid in the Agency's review of a proposed settlement agreement for purposes of determining whether it is fair, adequate, and reasonable. The process allows parties who have devoted efforts towards litigating and investigating impacted claims, and thus possess more intimate knowledge and familiarity with the issues, an opportunity to inform the Agency of their positions or express their concerns regarding a proposed settlement purporting to resolve and release such claims. This will aid and support the Agency in its performing its functions and responsibilities under the statutory scheme, thereby furthering the purposes and policies of the law. Of course, comments received by the Agency will not be binding on it, and the Agency will review and consider any comments and assign them whatever weight the Agency determines they merit, including based on the information or evidence provided. The Agency is unconcerned with the private interests of any individual or their counsel but rather whether a proposed settlement is fair, adequate, and reasonable to the state and all affected workers.

One commenter also urges the Agency to assign some weight in its review of comments to whether the party submitting them has been designated a high-frequency or non-compliant filer. The Agency rejects this suggestion. The Agency will consider comments received by it regarding a proposed PAGA settlement, including any information or evidence provided in support of any contentions opposing a proposed settlement, without regard to such designations but rather with a focus towards ensuring the proposed PAGA settlement is fair, adequate, and reasonable to the state and other affected workers.

Finally, one commenter proposes the Agency adopt a requirement that comments submitted to the Agency be served on the parties seeking approval of a proposed PAGA settlement agreement. The Agency finds such a requirement unnecessary and declines to adopt it. The comment process is designed to aid the Agency in its review of a proposed settlement and to inform the Agency's own decisionmaking process whether to submit comments, intervene, or take any such other action it deems appropriate. Service of comments on the parties thus is unnecessary in light of this purpose. The Agency notes such a service requirement potentially would involve some measure of increased costs on the parties to the proposed settlement, and thus would appear contrary to concerns expressed by commenters that this process will result in added costs (a contention the Agency finds unpersuasive for reasons previously explained).

Comment Summary No. 66: A request that the Agency should be required to notify parties within five days if a submission regarding a proposed settlement is deficient.

Comments Received From: LeadingAge (15D)

Response:

No action taken. One commenter requests the Agency adopt a provision requiring that the Agency must notify a party submitting a proposed settlement agreement within five days of receiving it if the Agency determines the submission is deficient. The Agency declines to do so. The regulation clearly describes the requirements when submitting a proposed PAGA settlement and accompanying documents to the Agency. The Agency retains discretion to take appropriate action regarding the proposed settlement agreement, including potential noncompliance with regulatory requirements, during the period provided for Agency review of the proposed settlement.

Comment Summary No. 67: The Agency should define the criteria considered by it in reviewing proposed settlements.

Comments Received From: Yoon Law (45D)

Response:

No action taken. This commenter requests the Agency provide clearer guidance in terms of the criteria evaluated by the Agency when reviewing proposed PAGA settlements. Review of a proposed settlement involves a fact-intensive inquiry based on the circumstances of the specific case and the nature of the claims involved. As courts have described, the ultimate inquiry is whether the proposed settlement is fair, adequate, and reasonable to both the state and other affected workers whose interests are being represented. Accordingly, the Agency finds the inquiry whether a particular proposed settlement is fair, adequate, and reasonable is best determined on a case-by-case basis in light of the claims and issues presented.

Comment Summary No. 68: An allegation that the timing of the Agency's proposed settlement submission requirements is inconsistent with the statute.

Comments Received From: LeadingAge (15D)

Response:

No action taken. Regulation 17461, subdivision (e) requires a party to verify compliance with prescribed administrative submission requirements in any court filing seeking approval of a proposed PAGA settlement. This commenter states the administrative submission requirements under regulation 17461 are inconsistent or conflict with the provisions of Labor Code section 2699, subdivision (s)(2). The statute instructs a PAGA plaintiff to submit a proposed settlement agreement to the Agency "at the same time" it is submitted to the court.

The Agency does not find any timing or sequence contradiction as suggested by the commenter, and further finds the cramped interpretation of the statute underlying this contention unpersuasive. Technically, it is not possible—or at least would be extremely difficult—for one person to file two different things in two different venues at the exact same time. Realistically and most practically, one filing will precede another. A more reasonable interpretation of the statute, and one more consistent with ensuring the Agency's role under it, allows for these actions to be performed on the same day in reasonable proximity to one another. Thus, parties may comply with the administrative submission requirements of regulation 17461 before filing the required documents in court

after completing the administrative submission. Alternatively, a party may file in court before submitting to the Agency, and then file a supplemental statement in court after doing so verifying compliance with the regulatory submission requirements as prescribed in subdivision (e) of regulation 17461.

Comment Summary No. 69: Attempts to settle or release PAGA claims after a PAGA notice has been filed but before a lawsuit has been filed.

Comments Received From: LeadingAge (45D, 15D); Employers Group (45D); Retailers (45D); CELA (45D); SEIU (45D); CalChamber (15D); CABIA (15D)

Response:

See modifications to regulation 17462. Regulation 17462 prevents the release of PAGA claims in settlements not subject to administrative or judicial oversight requirements. As originally drafted, the regulation prohibited the release of PAGA claims in settlements reached after a PAGA notice was filed but before a lawsuit was filed. Several commenters objected to that language. One commenter acknowledged the rule effectively reflects existing law but expresses concern it does not go far enough in addressing problematic behaviors. Other commenters support the provision but suggest clarifying language.

In response to comments seeking clarifying language, the Agency modified the regulation to state that settlements not subject to statutory administrative or judicial oversight procedures may purport to release PAGA claims. Additionally, the Agency added language clarifying an employee and employer may settle and release an employee's individual, underlying claims against the employer. As commenters acknowledge, the regulation is consistent with existing law.

Comments objecting to this regulation and asking the Agency to approve the settlement and release of PAGA claims outside established statutory review procedures are not well-taken, and such comments further demonstrate the need for the clarification provided by this regulation. While parties remain free to settle and resolve individual claims between themselves, PAGA is a public enforcement tool. Claims under PAGA ultimately belong to the state and are asserted on its behalf. (*Rose v. Hobby Lobby Stores, Inc*. (2025) 111 Cal.App.5th 162, 169; see *Esparza v. Safeway, Inc*. (2019) 36 Cal.App.5th 42, 61 [the law is not designed "to promote private enforcement without regard to the [Agency]"].) Accordingly, parties lack the ability to release claims belonging to the state without complying with applicable statutory oversight requirements. (Lab. Code, §§ 2699, subd. (s), 2699.3, subd. (c)(2).) The Agency declines to adopt procedures authorizing the release of PAGA claims inconsistent with the statutory framework.

One commenter suggests the Agency adopt a requirement parties notify the Agency if they have reached a private resolution between the filing of a PAGA notice and any subsequent lawsuit. The Agency finds such a requirement to be unnecessary here. Again, the regulation clarifies PAGA claims may not be released privately in such a context, thus protecting the state's and employees' interests against private or secret settlements.

"Irrelevant" Comments Not Specifically Directed at the Agency's Proposed Regulations or to the Procedures Followed by the Agency in Proposing or Adopting the Proposed Regulations (Gov. Code, § 11346.9, subd. (a)(3))

Comments Received From: Holt (45D, H); Brickhouse (45D, H); Jodi Cain (45D); Jodi Webber (45D); CABIA (45D); CBHA (45D, H, 15D); Non-Profit Coalition (45D); Employers Group (45D); Retailers (45D); Linda Colley (H); McNally Enterprises (H); HCA (H); HFA (H); Dawn Capp (15D); Peter Aronson (15D); Joe Wells (15D); Todd Mulbarger (15D); Buena Vista Business Services (15D); MB Holdings (15D)

Response:

The Agency received a number of comments that conflict with the statute or otherwise would require statutory amendments, are beyond the Agency's authority, or are beyond the scope of this rulemaking. The Agency thus dismisses the following irrelevant comments as summarized in the list below:

- Limitations on recoverable civil penalties for Labor Code violations or the manner in which penalties are calculated.
- Limitations on plaintiffs' attorney fees recoveries or allowing fee-shifting or employer attorney fee recoveries.
- Increase PAGA notice filing fees.
- Labor Code compliance is difficult and complex and there should be greater flexibility or guidance provided in determining Labor Code compliance.
- PAGA litigation is expensive and costly, employers are pressured to settle to avoid higher costs, and employers are unable to offer better benefits or to grow or expand their businesses due to the costs of PAGA litigation.
- Some plaintiff attorneys are more concerned about their own legal practices rather than the interests of the employees they purport to represent.
- Vacancies in the Labor Commissioner's Office despite available funding.

- Require additional oversight of PAGA notices filed within 30 days of an employee's termination.
- Publicly funded social service providers or organizations contracting with the government should be exempt from PAGA or allowed greater protection under the law.
- Restrictions on the scope of discovery in PAGA litigation absent proof or a demonstrated basis for such discovery.
- Requiring dismissal of PAGA lawsuits for failure to comply with litigation reporting requirements.
- Require "individual" PAGA claims be subject to arbitration.
- Adopt class action certification requirements for PAGA actions.

Untimely/Irrelevant Public Comments During 15-Day Period

In addition to the irrelevant comments listed above, the following written comments submitted during the 15-day period include comments beyond the scope of the modifications to the regulatory text or materials added to the rulemaking file as published August 3, 2026. The Agency notes such untimely or irrelevant comments generally are redundant of comments previously made or otherwise addressed in the responses above.

- Dawn Capp
    - PAGA notice filing abuses (See Response to Comment Summary No. 15)
    - Stronger consequences for abusive conduct (See Response to Comment Summary Nos. 21, 29)
    - Tolling of periods during non-compliant filer PAGA notice prefiling screening (See Response to Comment Summary No. 27)

- Jeffrey D. Klein
    - High-frequency filers; cover letter and employee certification (See Response to Comment Summary Nos. 18, 19)

- Bibiyan Law Group
    - Employer responses to PAGA notices (Cf. Response to Comment Summary No. 38)

- James Correa
    - Attorney certifications on PAGA notice filings (See Response to Comment Summary Nos. 10, 21)
    - Articulating the facts and theories supporting alleged violations in PAGA notices (See Response to Comment Summary No. 7)
    - Prefiling screening for PAGA notices filed by non-compliant filers (See Response to Comment Summary No. 27)

- Non-Profit Coalition
    - Prioritizing cure opportunities (Cf. Response to Comment Summary Nos. 36, 44, 45)

- SEIU
    - Articulating the facts and theories supporting alleged violations in PAGA notices (See Response to Comment Summary No. 7)
    - Relation-back of amended PAGA notices (See Response to Comment Summary Nos. 32, 33)
    - Exhaustion requirements (See Response to Comment Summary Nos. 12, 32)
    - Expedited review of PAGA notices (See Response to Comment Summary No. 35)
    - Requiring an employer provide notice of proposed settlement agreement (See Response to Comment Summary No. 64)

- Wilshire
    - High-frequency filer certification (See Response to Comment Summary Nos. 18, 19)

- CABIA
    - Articulating the facts and theories supporting alleged violations in PAGA notices (See Response to Comment Summary No. 7)
    - Exhaustion requirements (See Response to Comment Summary No. 12)
    - Additional consequences for high-frequency filers (See Response to Comment Summary No. 21)
    - Employer responses or challenges to PAGA notices (See Response to Comment Summary Nos. 24, 38)

- Capstone
    - Agency 45-day review period for proposed settlement agreements (See Response to Comment Summary No. 63)
    - Requiring notice of a proposed settlement to other PAGA plaintiffs (See Response to Comment Summary No. 64)
    - Allowing other PAGA plaintiffs to submit comments to the Agency regarding a proposed settlement agreement (See Response to Comment Summary No. 65)
    - Exhaustion requirements (See Response to Comment Summary No. 12)

- CBHA
    - Cure procedures (See Response to Comment Summary No. 44, 45; see also Response to Comment Summary Nos. 49, 58, 59)
    - Non-compliant filer consequences (See Response to Comment Summary No. 29)
    - Articulating the facts and theories supporting alleged violations in PAGA notices (See Response to Comment Summary No. 7)
    - Agency 45-day review period for proposed settlement agreements (See Response to Comment Summary No. 63)

    - Electronic filing requirements (See Response to Comment Summary No. 3)

- Employers Group
    - Electronic filing requirements (Response to Comment Summary No. 3)
    - Service of a PAGA notice (Response to Comment Summary No. 4)
    - Articulating the facts and theories supporting alleged violations in PAGA notices (Response to Comment Summary No. 7)

- Cogir
    - Allowing PAGA plaintiffs to submit comments to the Agency regarding a proposed settlement agreement (See Response to Comment Summary No. 65)

- HCA
    - Additional consequences for non-compliant filers (See Response to Comment Summary No. 21)

- LeadingAge
    - Employee certification/declaration for all PAGA notices (See Response to Comment Summary No. 10)
    - Exhaustion requirements (See Response to Comment Summary No. 12)
    - Electronic filing requirements (See Response to Comment Summary No. 3)
    - Small employer cure eligibility (See Response to Comment Summary No. 44)
    - Cure procedures (Cf. Response to Comment Summary Nos. 45, 48, 58, 59, 60)
    - Investigations by the Labor Commissioner's Office (Cf. Response to Comment Summary Nos. 39, 42)

- MB Holdings
    - Articulating the facts and theories supporting alleged violations in PAGA notices (See Response to Comment Summary No. 7)
    - Prefiling screening procedures for non-compliant filers (See Response to Comment Summary No. 27)

- Moon
    - These comments largely repeat arguments set forth in this commenter's 45-day written comments, including large portions in virtually cut-and-paste fashion, concerning PAGA notice requirements or the provisions of regulation 17415 (See Response to Comment Summary Nos. 7, 15, 17, 18, 19, 20, 27, 28, 30, 31)

Untimely/Late Public Comments

Untimely written comments were submitted by:

- Mills Sadat Dowlat, LLP (Mar. 24, 2026)
- Jef Appelbaum (Mar. 26, 2026)
- Michael Harbron (July 13, 2026)

ALTERNATIVES DETERMINATION

The Agency has determined that no alternative it considered would be more effective in carrying out the purpose for which this regulatory action is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Agency received and considered extensive public comments during the rulemaking process, including in the initial 45-day comment period, the ensuing hearing held by the Agency, and the subsequent 15-day comment period. The Agency's responses to relevant and timely comments received, including indicated modifications where made and the reasons therefor, or the reasons for declining to make suggested modifications, are included above. Except as set forth and discussed therein, no other alternatives were proposed or otherwise brought to the Agency's attention.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

The Agency did not identify any adverse impacts on small business as a result of this regulatory action, nor did the Agency receive any public comment identifying any adverse impacts on small business or means to reduce any such impacts.