



California provides some relief from wage statement litigation

A recent amendment to the Private Attorney General Act cuts employers some slack.

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In October 2015, California Governor Jerry Brown signed AB 1506 into law, in response to increased litigation over technical violations to wage statements, amending the state’s Private Attorney General Act (PAGA). Prior to this amendment, omitting either the inclusive dates of the period for which the employee is paid, or the name and address of the employer, were violations potentially exposing some restaurant owners to what could be crippling liability— even if the violations did not cause actual injury to the employees. Now, this new law permits employers to cure these

technical violations.

PAGA allows an aggrieved employee who is a private citizen to pursue civil penalties on behalf of the State of California Labor and Workforce Development Agency (LWDA) as long as certain requirements and procedures are met. PAGA claims give this aggrieved employee the right to pursue fines that would normally only be available to California State prosecutors. Essentially, this aggrieved employee is deputized as an attorney general and has the ability to seek civil penalties not only for violations that he or she personally suffered, but also on behalf of “other current or former employees.” This would mean one member of a restaurant’s waitstaff could pursue a class action suit on behalf of his or her coworkers—whether the other workers supported a lawsuit or not.

Now, to protect a business against wage statement defects, and related legal action, employers have options. The employer fighting legal action needs to reissue a “fully compliant, itemized wage statement to each aggrieved employee for each pay period three-years prior to the date of the written notice” from the aggrieved employee to the LWDA. After receiving such a notice, restaurant leadership is then provided with a 33-day compliance period (starting on the day the notice was postmarked) to reissue the wage statements.

Currently, it is unclear what impact this amendment will have. Unfortunately, it does not eliminate all claims under Labor Code section 226 for failure to provide the inclusive dates of the pay period, or failure to provide the accurate legal name and address

of the employer. While it does eliminate an employee's ability to file a PAGA claim, it does not eliminate statutory penalties that can be sought through class actions or individual lawsuits under Labor Code section 226.

The upside is that employers can still limit exposure to class actions through arbitration agreements. Violations under Labor Code section 226 are capped at \$4,000 per employee. More reform is needed, but this is a step in the right direction and should provide some much-needed relief for restaurant owners.

With the passage of this bill, owners need to work more closely with management, and review wage statements to make sure they are in compliance with the law. Employers should also train staff to notify management immediately when they receive such notices. Finally, if a restaurant owner is charged with violations under Labor Code section 226, it should contact legal counsel to determine whether he/she can cure alleged violations and/or minimize liability.

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