

Labor Violations

Newsom, Businesses Agree on PAGA Reforms

GOVERNOR GAVIN Newsom, legislators and business groups have struck an agreement to reform a law that has become a costly thorn in the side of employers operating in California, the Private Attorneys General Act.

The deal averts a showdown over a business-backed initiative slated to be on the November ballot that would repeal the law. The bill would keep the law intact while limiting frivolous litigation by allowing employers to make things right after a PAGA suit is filed.

PAGA allows workers who allege they have suffered labor violations, like unpaid overtime or being denied mandatory meal and rest breaks, to file suit against their employers rather than the typical route of filing a claim with the state Department of Labor Standards Enforcement.



The law essentially allows employees, represented by private attorneys, to stand in for the state and all their co-workers in suing their employer.

One reason workers pursue PAGA claims is the tremendous backlog that the DLSE faces, and they do so in the belief that the claim will be handled more quickly. However, a report by the Fix PAGA Coalition found that workers filing claims directly with the DLSE wait fewer than 10 months on average for their awards, compared to 23 months for PAGA court case awards.

Proceeds from settlements are split 25% with the employee who filed the case and the rest with the state, which collected more than \$200 million in penalties in 2022.

The Fix PAGA Coalition's report found that non-profits, small businesses and other employers have paid out nearly \$10 billion in PAGA case awards since 2013, with attorneys receiving the far bigger portion of the settlements.

Backers of the PAGA ballot initiative have withdrawn their measure in exchange for the legislation which was passed by June 27 and signed by Newsom the next day.

Agreement Highlights

Redefines 'standing' – It would require workers to personally experience the alleged violations brought in a claim.

Cure provisions – It would expand the list of Labor Code violations that can be cured before a PAGA action commences, which could allow employers to avoid lawsuits by making employees whole after receiving notice of alleged violations.

Limits claims – It would codify a court's ability to limit the scope of claims presented at trial to better manage the complaint.

Reforms penalty structure – It would cap penalties on employers that quickly fix policies and/or practices to make workers whole after they receive a notice of a PAGA action. It also caps penalties on employers that proactively comply with the Labor Code before receiving a PAGA notice.

See 'Package' on page 2

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OSHA Updates HazCom Standard

CHANGES ARE again coming to Fed-OSHA's Hazardous Communications Standard, which governs the handling of chemicals and other dangerous substances.

OSHA's final rule, which takes effect July 19, 2024, will bring the standard in line with the latest update to the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals.

The update revises criteria for the classification of certain health and physical hazards, as well as updating labeling requirements and safety data sheets (SDSs), among other changes.

Affected firms may have to update their HazCom program, and provide additional employee training for newly identified physical, health or other hazards.

It's important for employers to stay up to date on the HazCom standard to protect their workers. Labels and SDSs are often the first indication to a worker that they are handling a hazardous chemical, so it is imperative that they be as accurate and complete as possible.

Staggered Compliance Deadlines

First: Chemical manufacturers, importers or distributors evaluating substances will have to comply by Jan. 19, 2026, while those that evaluate mixtures will have to comply by July 19, 2027.

Second: Other employers will have to comply six months after those dates: July 19, 2026 for those that handle, store or use substances, and Jan. 19, 2028 for mixtures.

What the rule does

The new rule ensures that OSHA's HazCom standard jibes with the Global Harmonized System, which is used in most developed and many developing countries around the world.

It provides consistent definitions of hazards, specific criteria for

labels, and a specific format for safety SDSs.

The new classification criteria only affect SDSs and labels for certain products (aerosols, desensitized explosives and flammable gases). If your firm handles any of these, you will have to ensure that your labels and SDSs for select hazardous chemicals are updated accordingly.

Rule highlights

Labeling — It updates labeling requirements for certain very small containers and bulk containers to ensure the labels are comprehensive and readable.

Manufacturers must only provide the updated label for each individual container with each shipment once the product reaches its customer. Warehousing employees will not be required to open sealed pallets and boxes of containers to relabel them or repackage the product in preprinted bags.

Flammable gas addition — The Flammable Gas hazard class gets a new hazard class (desensitized explosives), as well as new hazard categories:

- Unstable gases in the Flammable Gases class
- Pyrophoric gases in the Flammable Gases class, and
- Nonflammable aerosols in the Aerosols class.

New and revised definitions — There are a number of definitions that are being revised or which are new altogether.

Employer takeaway

HazCom citations are one of the most common citations that OSHA issues. If your operations handle chemicals, you should take the opportunity now to review your HazCom program and plan for compliance by the deadline that affects your company. ❖



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The Package Aims to Limit Frivolous PAGA Claims

The takeaway

Jennifer Barrera, CEO of the California Chamber of Commerce, said in a prepared statement: "This package provides meaningful reforms that ensure workers continue to have a strong vehicle to get

labor claims resolved, while also limiting the frivolous litigation that has cost employers billions without benefiting workers."

While the legislation will not eliminate PAGA, all sides of the agreement predict it would go a long way towards reducing frivolous

Compliance Alert

Workplace Violence Prevention Law Takes Effect July 1

CALIFORNIA EMPLOYERS must start complying with the state's new workplace violence prevention law, starting July 1.

Employers will be required to adopt and implement workplace violence prevention plans that satisfy the requirements of California Labor Code.

All employers in the state are required to comply with the new law, with only a few exceptions.

What the Plan Must Do

- Identify who is responsible for implementing the plan.
- Involve employees and their representatives in its creation.
- Include details for how to accept and respond to reports of workplace violence.
- Prohibit employee retaliation.
- Include details for communicating with employees regarding workplace violence matters, including: how to report a violent incident, threat or other workplace violence concern; effective means to alert employees to the presence of a workplace violence emergency; and how to obtain help from staff assigned to respond and/or law enforcement.
- Lay out instructions for responding to actual and potential emergencies.
- Include procedures for post-incident response and investigation.
- Require the employer to develop and provide effective training. Employees must be provided with initial training and then an annual refresher.
- Require the employer to identify, evaluate and correct workplace violence hazards.
- Require the employer to post incident response and investigations.

Training

Employers will be required to train their workers on workplace violence prevention with training materials that are easy to understand. Training must include:

- Familiarizing employees with the plan and how to participate in developing and implementing the plan.
- Definitions and requirements of California Labor Code section 6401.9.
- Information on how to report workplace violence incidents without fear of retaliation.
- Job-specific violence hazards and preventive measures.
- Explaining the purpose of the violent incident log and how to obtain related records.
- The opportunity for employees to ask questions and get more information on their employer's plan.

Record-keeping

Employers will be required to keep records of:

- Workplace violence hazard identification, evaluations and any corrections made (must be maintained at least five years).
- Training (kept for one year).
- Violent incidents (kept for at least five years).
- Workplace violence incident investigations (kept for at least five years). ❖

Having Trouble Getting Started?

Cal/OSHA has a model workplace violence prevention plan that provides a comprehensive starting point.

You can find it here



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Workers' Compensation

Changes Coming to Electronics, Dual-Wage Class Codes

CALIFORNIA INSURANCE Commissioner Ricardo Lara on May 31 approved all of the Workers' Compensation Insurance Rating Bureau's recommended changes to class codes for some electronics manufacturing sectors, as well as increases to the wage thresholds for construction industry dual classifications.

The following changes will take effect for policies incepting on or after Sept. 1, 2024:

Electronics manufacturing industry

One of the changes links two more classes to the 8874 companion classification, which was created in September 2022 to cover certain low-risk classes in the electronics industry group.

Currently, 8874 is a companion class that covers payroll for lower-risk jobs in hardware and software design and development, computer-aided design, clerical and outside sales operations for two electronics industry classes:

- 3681 (manufacturing operations for electronic instruments, computer peripherals, telecommunications equipment), and
- 4112 (integrated circuit and semiconductor wafer manufacturing).

Starting Sept. 1, similar low-risk white-collar personnel currently assigned to class 3572 (medical instrument manufacturing) and 3682 (non-electric instrument manufacturing) will be linked to the 8874 companion class code.

Dual-wage increases

The thresholds that separate high- and low-wage earners in 16 dual-wage construction classes are also increasing Sept. 1.

These class codes have vastly different pure premium rates for workers above and below a certain threshold as the lower-wage workers (often who are less experienced) have historically filed more workers' comp claims.

Rates for lower-wage workers are often double the rates for higher-wage workers.

Have questions about your workers' comp class code or coverage?

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DUAL-CLASS CODE CHANGES COMING 9/1

Classification

Current per hour threshold

New threshold

5027/5028	Masonry	\$32	\$35
5190/5140	Electrical Wiring	\$34	\$36
5183/5187	Plumbing	\$31	\$32
5185/5186	Automatic Sprinkler Installation	\$32	\$33
5201/5205	Concrete or Cement Work	\$32	\$33
5403/5432	Carpentry	\$39	\$41
5446/5447	Wallboard Installation	\$38	\$41
5467/5470	Glaziers	\$36	\$39
5474/5482	Painting/Waterproofing	\$31	\$32
5484/5485	Plastering or Stucco Work	\$36	\$38
5538/5542	Sheet Metal Work	\$29	\$33
5552/5553	Roofing	\$29	\$31
5632/5633	Steel Framing	\$39	\$41
6218/6220	Excavation/Grading/Land Leveling	\$38	\$40
6307/6308	Sewer Construction	\$38	\$40
6315/6316	Water/Gas Mains	\$38	\$40