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NEWSALERT

Supreme Court Action

PAGA Ruling a Big Win for Employers

THE U.S. Supreme Court has put a significant dent in California's Private Attorneys General Act, which in recent years has resulted in a surge in legal actions against California employers by their workers.

The law has been a huge thorn in the side of employers, who have been on the receiving end of litigation by workers who allege Labor Code violations.

The high court ruled that employers can compel arbitrations for employee-initiated PAGA actions. The court also held that if a plaintiff in a PAGA action is bound to arbitration, they automatically lose standing to prosecute claims on behalf of other "aggrieved" employees and remaining PAGA claims must be dismissed.

This is good news for businesses. Those that move to cement policies that comport with the new decision, will have a chance to drastically reduce their exposure should they be targeted by one of these actions. And because various court rulings have expanded the law's breadth, PAGA has been a source of confusion among employers. The new ruling provides clarity.

The history of PAGA

The law was enacted in 2004, after the Legislature grew concerned that the state lacked the resources to fully enforce the California Labor Code.

PAGA permits employees to sue for civil penalties on behalf of themselves, fellow employees and the State of California for alleged Labor Code violations. If they are filing on behalf of other employees, the other workers do not participate in the lawsuit.

The employee in essence acts as the state's watchdog; they need not suffer any actual harm from an alleged violation in order to file a lawsuit. One employee has the ability to file a suit alleging multiple Labor Code violations.

For any provision of the Labor Code that does not specify a civil penalty, PAGA permits employees to seek a default penalty of up to $100 for each aggrieved employee per pay period for an initial violation, and up to $200 for each aggrieved employee per pay period for a subsequent violation.

If a suit is successful, the state receives 75% of the damages and the rest is distributed among the aggrieved employees.

The number of PAGA lawsuits filed in California on behalf of groups of workers has skyrocketed since 2014, when the California Supreme Court held that because PAGA plaintiffs step into the state's shoes, their claims cannot be forced into individual arbitration.

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K Taylor Insurance Solutions

15068 Rosecrans Ave. Suite 114
La Mirada, California 90638

Phone: (562) 758-3482
E-mail: kpt@ktaylorinsurance.com
www.ktaylorinsurance.com

Minimum Wage

Increases Introduced in 11 Counties and Cities

AS WE hit mid-year, nearly a dozen cities and counties in the Golden State are icreasing their minimum wage for employers that operate within their jurisdictions.

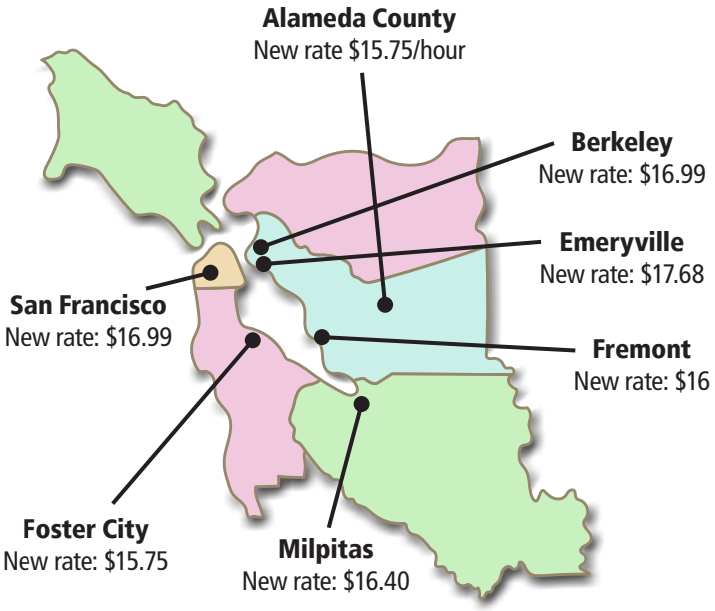
The state minimum wage is currently $15 an hour for employers with 26 or more workers, and $14 an hour for all other smaller employers, but some cities and counties have higher rates to account for cost-of-living differences.

The state minimum wage, meanwhile, is set to increase again Jan. 1, 2023. The minimum rate will rise to $15.50 for all employers in the state.

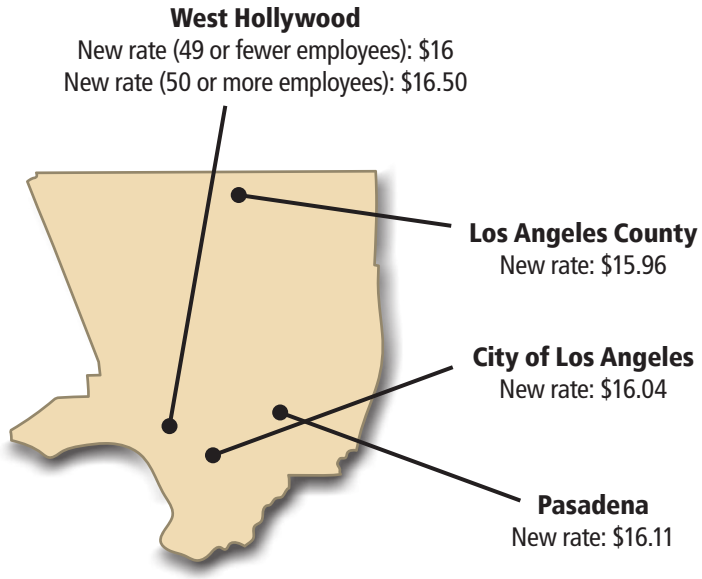
But municipalities can set higher rates. Here's a list of the main changes effective July 1:

(All of the following rates apply to all employers who hold a business license from the respective city or county, and who directly or indirectly employ or exercise control over the wages, hours or working conditions of any employee in the jurisdiction.) ❖

Greater Bay Area



Los Angeles Area



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Revisit Any Arbitration Agreements You Have with Workers

A resounding decision

The U.S. Supreme Court's 8-1 ruling in the case of *Viking River Cruises Inc. vs. Moriana* is likely to stem a flood of lawsuits filed in recent years accusing companies of widespread wage law violations.

The court ruled that the Federal Arbitration Act, which states that in employer-worker agreements employees are required to arbitrate legal claims, trumps the earlier California Supreme Court decision barring forced arbitration.

SCOTUS ruled that PAGA plaintiffs can only establish standing to sue by first alleging an individual claim. And since the FAA requires individual claims to go to arbitration if a worker has signed an arbitration agreement, the plaintiff cannot add additional claims for other employees, Justice Samuel Alito wrote in the decision.

Here's what employers should take away from the decision:

- Individual PAGA claims can be arbitrated if an employee has signed a contract agreeing to arbitrate Labor Code and other employment-related actions.
- PAGA claims for other alleged aggrieved employees that the complaining employee includes in the lawsuit are not subject to arbitration, and those claims should be dismissed.
- If you have arbitration agreements for your workers, you should revisit them to ensure they allow you to compel arbitration of PAGA claims. ❖

Reporting Claims Later Can Push up Costs 50%

ONE OF the keys to keeping the costs of a workers' compensation claim from spiraling out of control is prompt claims reporting.

Claims are routinely filed late, either by the injured worker who fails to report it to the employer, or the employer dawdling or procrastinating and not reporting the claim to its insurer.

Either way, those delays result in delays in treatment, which can exacerbate the injury, leading to additional medical care and higher costs.

In fact, one study by Boca Raton, Fla.-based National Council on Compensation Insurance (NCCI) found that the average claims for workplace injuries that were reported four weeks after the incident, ended up costing nearly 45% more than claims that were reported in the first week after injury.

Waiting to file claims three to four weeks after the injury ended up costing 29% more, according to the NCCI.

The message for employers is to require staff to promptly report workplace injuries and for businesses to report injuries to their insurer as soon as possible after they are made aware of them.

Those added claims costs, while originally borne by the insurer, can come back to haunt you in the form of higher premiums during your next policy renewal.

The NCCI, which helps set rates in more than 30 states around the country, found in its study that claims that were reported more than two weeks after an incident were characterized by the following:

- More attorney involvement, and
- More use of lump-sum settlement payments.

"These characteristics suggest that claims with a delay of more than two weeks are more complex to settle, take longer to close, and involve a longer period before the injured worker can return to work," the NCCI wrote in its report.

The fallout

Many employers delay reporting workplace injuries, particularly if they seem minor at the time. But this mentality can backfire badly.

Effects of Delayed Reporting

- Delaying reporting makes an investigator's job harder. The longer the time between the accident and reporting leaves the potential for inaccuracies, misstatements and even destroyed evidence in cases where the claim is falsified by the worker.
- The chances of litigation increase with delayed reporting. Claims reported on the same day they occur involve an attorney 13% of the time, compared to 32% for claims reported after week four, the NCCI found.
- Any delay in medical treatment, even if it's just a week or two, could end up making injuries worse, resulting in more treatment and medications. It also is likely to extend the life of the claim as the worker's injuries may take longer to heal and they could be unable to work.
- Claims that stay open longer have a lower closure rate at 18 months after injury, according to the NCCI.
- By delaying reporting, employers shortchange their workers, which can affect employee morale.

The takeaway

When you become aware of a workplace injury, start the reporting process as soon as possible. The longer you wait, the costlier the claim likely will be and the more chance your injured worker will hire an attorney.

Establish a claims reporting protocol for all employees to follow. They should be required to immediately report any work-related injury, no matter how small. That includes first aid claims.

Put in place protocols to ensure that any injury report gets to your office's point person so the next step can be determined. Let employees know that it's in their best interest to report any work injuries and that you won't retaliate for filing a claim.

If all employees are responsible for reporting injuries to their supervisor, every supervisor needs to know what their own responsibilities are, as well. ❖

Capitol Alert

Three Measures Worrying Employers

THREE MEASURES progressing in the state Capitol have the employer community on edge. If they become law, they would add new areas of liability for businesses to contend with.

The bills passed their houses of origin by the legislative deadline of May 27 and are slated to be heard in the other house's committees. Here are the bills that could affect your operations:

SB 1044 (Author: Maria Elena Durazo, D-L.A.)

This controversial legislation would prohibit an employer, in the event of a state of emergency or an emergency condition, from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace within the affected area because they feel unsafe.

Also, employees would be allowed to leave work regardless of existing health and safety standards and regardless of whether or not the employer has provided health and safety protections.

Under the measure, workers could also walk off the job during an "emergency condition," which is defined as:

- An event that poses a serious danger to the structure of a workplace or to a worker's immediate health and safety, or
- An order to evacuate a workplace, a worker's home or the school of a worker's child.

SB 1044 would also bar employers from preventing employees from using their mobile phones to seek emergency assistance, assess the safety of the situation or communicate with another person to confirm their safety.

The bill has teeth: Employers that dispute a worker's decision to leave or not show up for work if they feel unsafe could be subject to Private Attorneys General Act (PAGA) lawsuits (see related story on page 1).

Further, employers that fire and replace employees who have chosen not to work during the emergency could also be sued for retaliation.

SB 1162 (Author: Monique Limón, D-Goleta)

Under this bill, employers and contractors would have to report to the state Department of Fair Employment and Housing race, ethnicity and gender data for all employees, including top management.

Already, firms with 100 or more workers are required to submit pay data reports to the agency, which cross-references race, ethnicity and gender information. The new bill would require that those reports be made public over time, depending on the size of the organization.

Bill author Limón says SB 1162 would help identify employment pay and gender pay disparities through the collection and publication of pay data.

A number of employer groups, like the California Chamber of Commerce, have come out against the legislation saying that it "encourages litigation against employers based on the publication of broad, unreliable data collected by the state."

The chamber further says: "[The bill] undermines employers' ability to hire, imposes burdensome administrative and record keeping requirements, and subjects employers to a private right of action and penalties under the PAGA."

AB 2188 (Author: Bill Quirk, D-Hayward)

This bill would bar employers from "discriminating" in hiring, termination or other conditions of employment based on employees using cannabis while off duty.

The author says the legislation is necessary because the active ingredient in marijuana can stay in a person's system for weeks after the effects have worn off. During that time, the worker can test positive for cannabis use.

AB 2188 does not require employers to permit employees to be high while working.

The bill would exempt construction trade employees and would not preempt state or federal laws that require employees to submit to drug testing. ❖