



California Legislature Amends PAGA to Permit Cure of Certain Alleged Paystub Violations

By Elizabeth (Lisa) Brown

On October 2, 2015, Governor Brown signed into law AB1506. AB1506 is an amendment to PAGA and can be found here: http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1501-1550/ab_1506_bill_20150911_enrolled.pdf.

Employers should take this opportunity to evaluate their paystubs to ensure compliance with Labor Code Section 226, and strengthen their internal or outside counsel practices for evaluating pre-lawsuit PAGA notice letters.

Summary of the PAGA Amendment

PAGA has always provided employers the opportunity to cure certain violations within a 33 day period from receipt of the pre-lawsuit LWDA notice letter. AB1506 expands on this notion by allowing employers to cure certain violations of the paystub provisions of the Labor Code, but attaches strings to such cure. The impacted alleged violations are Section 226(a)(6) (pay period dates) and (8) (name and address of the employer). Previously, the employer could not cure Section 226 violations at all.

AB1506 revises Section 2699.5 to exclude Sections 226(a)(6) and (8) from the list of Labor Code provisions for which notice (but no cure) is necessary. This means that for all paystub violations *other than* dates of pay period and name/address of the employer, the allegedly aggrieved employee need only to give notice under Section 2699.3(a), but the employer cannot cure. *Amended Section 2699.5.*

AB1506 specifies that the “cure” for an alleged paystub violation (Labor Code Section 226(a)(6) and (8)) will be effective “only... upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written [pre-lawsuit PAGA notice].” *Amended Section 2699(d).*

AB1506 further provides that, while an employer may cure certain violations up to three times during a 12 month period, the cure for pay stubs outlined above is only available once during a 12 month period. *Amended Section 2699.3(c)(2)(B)(ii).*

AB1506 states that the statute is to take effect immediately “in order to incentivize prompt resolution of disputes over itemized wage statements... arising from certain specified claims under Section 226.”

Take Away

With the cure provisions in PAGA gaining more prominence, it is important to scrutinize LWDA notice letters for any potential to cure an alleged violation. Careful consideration of the notice early, before a lawsuit is filed, is essential as PAGA jurisprudence continues to develop.

If you have any questions about this amendment to PAGA, please contact us.