



## STOKES WAGNER

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### California Supreme Court Limits Recovery for PAGA Claims

Are you familiar with PAGA? Do you have a PAGA claim for unpaid wages filed against you right now? If yes, this recent California Supreme Court case may apply to you. (*ZB, N.A. v. Superior Court*).

#### **What is PAGA?**

In a nutshell, the Private Attorney General's Act ("PAGA"), is a California state statutory scheme within the Labor Code that allows aggrieved employees to step into the shoes of the State and enforce California's Labor Code provisions by filing lawsuits against their employer to recover civil penalties. PAGA is considered a representative action, as an aggrieved employee is suing on behalf of both themselves and their similarly situated colleagues. PAGA claims may not be arbitrated even if an employee signs an arbitration agreement. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348).

#### **What is Labor Code section 558?**

Labor Code section 558 authorizes the Labor Commissioner to seek civil penalties against employers for violations of California's overtime laws. The penalties are as follows:

- (a) For a first violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (b) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

#### **Why can't employees bring PAGA claims for unpaid wages under section 558?**

In reaching its decision, the Court broke down section 558's provisions into two separate and distinct remedies. The fixed dollar amounts of \$50 and \$100 the court were determined to be true civil penalties. The provision for an amount sufficient to recover underpaid wages, on the other hand, the Court determined to be compensatory damages.

California enacted PAGA to be an enforcement mechanism; to allow aggrieved employees, who formerly had no private right of action to fight for the enforcement of certain Labor Code laws, to act in the public interest. It allows parties to seek civil penalties against their employers, not personal recompense. As such, a plaintiff may not seek to recover underpaid wages as part of its PAGA claim, but instead must seek those wages as damages in a private action.

#### **What does this decision mean?**

Questions? Contact Stokes Wagner.

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A class action waiver, as stated previously, is ineffective against an employee PAGA claim. The Court today has made clear that an employee may not circumvent a well-drafted arbitration and class-action waiver agreement by pursuing a PAGA claim seeking compensatory damages.

For the full text of the opinion, [click here](#).