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Airline Not Liable for Heightened PAGA Fines in California Wage Case, SHRM, ft. Katherine Catlos

Katherine Catlos, San Francisco Partner, was quoted in *SHRM's coverage of the Virgin America PAGA decision.*

PAGA Penalties

In addition to facing private lawsuits for labor code violations, employers may be subject to PAGA fines. PAGA allows aggrieved employees to sue over alleged labor code violations on behalf of themselves and other employees by stepping into the shoes of state regulators to recover civil penalties.

Under PAGA, an initial violation carries a $100 penalty per employee per pay period. Every subsequent violation carries a $200 penalty. Seventy-five percent of the penalties that are recovered go to the state, and 25 percent go to employees. Plaintiffs also can recoup attorney fees.

In *Bernstein, the trial court said the $200 penalty should apply to violations that occurred after the lawsuit was filed, but the 9th Circuit disagreed. The 9th Circuit relied on a California appeals court decision, which said, "Until the employer has been notified that it is violating a labor code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."*

"The 9th Circuit resolved a question that has impact for all employers being sued for PAGA violations," said Katherine Catlos, an attorney with Kaufman Dolowich & Voluck in San Francisco. "In the past, counsel for private attorney general plaintiffs argued enhanced penalty calculations based on the date a lawsuit was filed, arguing all penalties after that date were subject to $200 per violation," she explained.

With this recent decision, the 9th Circuit held that the enhanced $200 penalty applies to violations that follow a court ruling or a labor commissioner decision and not as of the date the plaintiffs filed their lawsuit. "So therefore, employers have a win, in the sense that the range of potential penalties' calculations will be reduced when assessing potential recovery," Catlos said.

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