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Mansfield Rule Certified 2022-2023

California Employees Can’t Seek Back Pay Under PAGA, *SHRM, ft. Katherine Catlos*

Katherine S. Catlos, partner at Kaufman Dolowich & Voluck LLP in San Francisco, and Chief Diversity & Inclusion Officer at KD, was quoted in an article written by Lisa Nagele-Piazza published by *SHRM on September 16, 2019.*

Employees cannot collect unpaid wages under the California Private Attorneys General Act (PAGA), the California Supreme Court has ruled. PAGA allows workers to seek civil penalties for labor code violations on behalf of the state, but they must pursue back wages in separate actions against their employers.

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. Seventy-five percent of the penalties that are recovered go to the state, and 25 percent go to employees.

In 2014, the California Supreme Court held that—even if workers had signed an arbitration agreement or class-action waiver—employees couldn't be compelled to arbitrate PAGA claims. The court reasoned that PAGA claims are for the public benefit and that it is contrary to public policy to enforce waivers. Furthermore, the state is the true party in a PAGA claim, because the employee is bringing the claim on behalf of the state.

In an opinion issued on Sept. 12, the state high court said PAGA actions are limited to collecting civil penalties. "Pursuing civil penalties does not prevent an employee from separately or concurrently pursuing unpaid wages and other remedies already available to her," wrote Justice Mariano-Florentino Cuéllar in a unanimous decision.

Employer Takeaway

"We may see the pace of PAGA claims drop back to when the statute was first rolled out when plaintiff's attorneys questioned why to even bother with the statute, especially given the 75/25 split of PAGA penalties," said Katherine Catlos, an attorney with Kaufman Dolowich & Voluck in San Francisco.

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