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Mansfield Rule Certified 2022-2023

Pay Stub Violations No Longer a Payday Under PAGA, *California HR, by Katherine Catlos and Lauren Ziegler*

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October 13, 2015

Pay stub violations are currently a hot issue in wage and hour litigation. California employers are often sued for technical errors contained in wage statements due to the hefty penalties attached for noncompliance.

Under California Labor Code Section 226, employees must be provided with wage statements containing nine specific items, including start and end dates for the pay period, the legal name and address of the employer, gross wages earned, total hours worked, rates of pay, and deductions taken. Failure to include any of these items exposes an employer to penalties of up to $4,000 per employee.

Employers face additional penalties if pay stub claims are pursued under California's Labor Code Private Attorneys General Act (PAGA). This statute "deputizes" aggrieved employees to recover civil penalties for labor code violations that otherwise can be assessed and collected by the Labor and Workforce Development Agency (LWDA).

PAGA suits are costly to employers because a $200 penalty for recurring violations attaches to each employee during each pay period, up to a period of one year. This is significant for larger employers because of this cumulative penalty. As a jurisdictional prerequisite to initiating a PAGA suit, an aggrieved employee must first send a letter to his or her employer and the LWDA listing the specific labor code sections allegedly violated. This letter provides notice to the employer of a potential lawsuit. Depending on the particular violations alleged, the letter may also provide the employer with an opportunity to "cure" the violations within 33 days (the "cure period") without incurring PAGA penalties for past violations. Typically in these PAGA claims, employers are being sued for not including the start and end dates for pay periods or for using a fictitious business name instead of their legal name.

Assembly Bill (AB) 1506, signed by Gov. Jerry Brown on Oct. 5, 2015, is a welcome respite for employers facing stiff penalties for these technical wage statement violations. Before this new legislation, pay stub violations were not considered "curable" under PAGA. This meant employers were on the hook for past violations, even if they had corrected the violations within 33 days.

AB 1506 is great news for employers because it makes pay stub violations "curable" under PAGA. Specifically, this legislation allows employers to correct past violations involving: 1) the start and end dates for the pay period, and 2) the legal name and address of the employer. Assuming these are the only types of Labor Code Section 226 violations at issue, the employer will be able to dodge hefty penalties for these technical violations by fixing these issues within the cure period.

AB 1506 became effective immediately with Gov. Brown's signing it into law. Because AB 1506 provides only a cure period for pay stub violations, it will not have an effect on pay stub cases currently being litigated under PAGA (since current litigation under PAGA necessarily means the 33-day cure period has expired). However, with AB 1506 effective, pay stub claims under PAGA with respect to payroll start and end dates and legal name and address of the employer may become moot if corrected within the 33-day window. Although employers will still be exposed to the statutory penalties under Labor Code Section 226, AB 1506 makes pay stub violations no longer a big payday under PAGA.

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