

Law Offices of
California
Rural Legal
Assistance
Foundation
(CRLAF)

By Fax

Hon. Tony Thurmond, Chairman
Labor and Employment Committee
California State Assembly
Sacramento, CA. 95816

Re: AB 281 (Salas)—Oppose

Dear Mr. Chairman:

We write in opposition to AB 281, which makes unnecessary and unwarranted changes to the Labor Code Private Attorneys General Act (PAGA). AB 281 proposes three changes to existing law that are deceptively simple but will significantly impact the effectiveness of the Act and undermine its central purpose. If implemented, these changes will also increase administrative costs for LWDA; create collateral legal issues increasing the costs of litigating these cases; and will allow employers to avoid PAGA liability for fundamentally important labor law violations that deserve punishment, not leniency.

CRLAF was an original co-sponsor of PAGA. One reason we helped develop it and support its enactment was that exploited workers in California's underground economy lacked effective legal tools to deter misconduct by unscrupulous growers and farm labor contractors who had adopted a 'wage theft' business model.

Prior to PAGA, wage theft was attacked by filing of an individual 'Berman' hearing wage claim or a civil lawsuit. Workers, even if they won, could generally recover only the amounts stolen from them, plus interest (and, if applicable, they could also recover civil penalties arising under a few wage-related statutes (e.g., for illegal wage statements or for failure to pay when due)). This limited relief was seen by many scofflaws as the 'cost of doing business': In the unlikely event they ever got caught, they merely paid (at most) what they should have paid in the first place. Often, workers were forced to settle for less than what was stolen from them.

In a PAGA action, by contrast, a court is authorized to award (in addition to unpaid wages, etc.) all applicable civil penalties for all serious Labor Code violations brought on behalf of a plaintiff "and other current or former employees against whom one or more of the violations was committed." This is an essential feature of PAGA that is designed to create a significant deterrent to future wage theft and related labor law violations that was lacking in a typical wage claim lawsuit.

CRLAF has agreed to a number of amendments to PAGA to address perceived problems with the statute over the past 10 years. Most recently, we worked with the Brown Administration to reform several aspects of PAGA (e.g., mandatory court approval of settlements; extended periods of time for administrative review of potential PAGA claims; and creation of a PAGA unit within the LWDA to scrutinize 'abusive' PAGA lawsuits). It is for that reason that we believe AB 281's changes are unnecessary.

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However, we also contend that changes made by AB 281 —e.g., allowing workers to recover civil penalties under PAGA for “violations by the employer actually suffered by that employee”— undercut the central deterrent purposes of PAGA and should be rejected by the committee.

For example, consider a current case where some of the workers were shaken down for kickbacks, and paid the kickbacks, but others who refused to pay were fired. In a PAGA suit under current law, the fired workers would seek civil penalties for the illegal firing AND for the illegal kickbacks for ALL affected workers.

Under the terms of AB 281, though, the employer would appear to be able to avoid the PAGA workforce-wide penalties related to the illegal kickbacks, because the worker bringing the action—having been brave enough to assert his or her rights—did not ‘suffer’ that violation. We believe this change significantly undercuts the statute’s deterrent effect against lawbreaking employers, and should be rejected by the committee.

Similarly, the provision of AB 281 that makes all non-Division 5 labor law violations—even the most serious ones— “curable” (under an expanded timeline) would return us to the ‘bad old days’ when once you catch an employer in labor law violations, all he/she has to do is pay what he/she should have paid in the first place. This proposal undermines the purpose of penalties for serious labor law violations by eliminating the financial disincentive to violating the law.

Labor Code Section 2699.5 (*‘list of serious violations not curable’*) was established in recognition that employers should not be allowed to avoid being penalized for their major unlawful acts merely because they come into compliance after the fact. Extending the ‘cure’ provisions to all serious violations, including minimum wage and overtime violations, eliminates the financial risk for employers and makes wage theft a zero loss game for the scofflaw employer.

Under AB 281, an employer who steals minimum wages from hundreds of workers can be caught red-handed but will still be able to avoid any penalty for his or her wrongdoing merely by paying the workers the money he stole from them!

For all the foregoing reasons, we oppose AB 281 and urge the Assembly Labor Committee to vote “No” on the bill when it is before it. If you or your staff have questions about our position on this bill, please contact me at email@markschacht.com or 510-812-5399.

Sincerely,

Mark Schacht
Deputy Director

cc: Hon. Rudy Salas
Assembly Labor and Employment Committee Members