



Let's Talk PAGA:

Navigating Shifting Case Law, New Theories, and Defense Strategies

Series 5: PAGA Settlement Strategies

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Seyfarth Shaw LLP

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Agenda



01 Approval process for PAGA settlements

02 Structuring PAGA settlements

03 Differences between PAGA and class action settlements

04 Settling PAGA actions on a single plaintiff basis

Structure of a PAGA Settlement: Overview

Basics

Procedural
Issues

Numbers

Payment
Breakdowns

Terms

Typical
Settlement
Provisions

Foundational Information on PAGA Settlements

**Settlement
must be
approved by
the Court**

**Must be
reported
to the
LWDA**

**Settlement
Group
("aggrieved
employees")**

How do the Numbers Break Down?

Numbers

- 75% to State & 25% to “Aggrieved Employees”
- Attorneys’ Fees
- Settlement Administrator Fees
- Enhancement Fee?
- **Breakdown of Payments:**
 - \$1,000,000 Settlement with 25% Attorneys’ Fees
 - \$1,000,000 - \$250,000 Attorneys’ Fees = \$750,000
 - \$750,000 - \$5,000 Administrator Fee = \$745,000
 - \$745,000 x .75 = \$558,750 to State of California
 - \$745,000 - \$558,750 = \$186,250 to “Aggrieved Employees”

Basic Settlement Terms

Release & Scope

Contingencies

**Payment Timing &
Payments**

Notice?

Standards for Settlement Approval

Once Again, There Is Lack of Clarity

No Set Standard for Court Approval

- “California courts have not determined the standards by which a trial court reviews and approves a proposed settlement.”
 - *Starks v. Vortex Indus., Inc.*, 53 Cal. App. 5th 1113, 1124 (2020)
- Courts commonly apply class action settlement standards
- “PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected.”
 - *Williams v. Superior Court*, 3 Cal. 5th 531, 549, 398 P.3d 69, 81 (2017)

No Set Standard on How to Seek Court Approval

- Formal Motion
- Stipulation for Approval

Comparison With Class Action Settlements

Similarities Between Class and PAGA Settlements

- Both require court approval and result in an enforceable judgment
- Both bind individuals covered by the settlements
- Court will review request for attorneys' fees and costs
- Individuals covered by the settlements receive some portion of the settlement
- Except for very small settlement, parties typically use a settlement administrator

Comparison With Class Action Settlements

Differences Between Class and PAGA Settlements

PAGA Settlement	Class Settlement
One step approval process	Preliminary and final approval
No opportunity to opt out	Opportunity to opt out (if class not certified)
Only the State can potentially object	Individuals can object
Individuals cannot bring PAGA claim for released claims	No impact on ability to bring PAGA claim
No impact on individual claims	Individual claims covered by settlement released
75% of the net fund goes to the State and 25% to individuals	All of the net fund distributed to individuals
100% penalties	Can be both wages and penalties

CLE CODE

You Got A Great Deal – Now What?

Settling PAGA Claims With A Single Plaintiff

- Must likely dismiss PAGA claim without prejudice
- Will need Court approval to dismiss PAGA claims
- Stipulation or Request for Dismissal required with declaration from counsel and/or plaintiff
 - Prepare for potential questions as to why PAGA claim is being dismissed
 - Court wants to ensure plaintiff isn't selling out the alleged aggrieved employees
- No need for notice to the putative PAGA aggrieved employees

Settling On A Single Plaintiff Basis

Settling On A Single Plaintiff Basis

The Specter of *Reins*

Plaintiff Standing Remains After Settlement

- *Kim v. Reins International California, Inc.*
 - California Supreme Court ruled that an employee does not lose standing to pursue representative PAGA claims as an “aggrieved employee” by settling and dismissing individual underlying claims
 - Turns standing on its head → no personal harm remains but can be a lawsuit figurehead anyway
 - Employee retains standing so long as they have allegedly suffered a relevant Labor Code violation
 - Held PAGA is not an “injury-based” standing claim because it is on behalf of the state
- Unresolved what would happen if plaintiff settled his/her own PAGA claim privately

Settling On A Single Plaintiff Basis

Mitigating Potential Future Risk

Consider Statute of Limitations

- Plaintiff could re-file PAGA claim dismissed without prejudice
- May structure settlement agreement to have payout or staggered payout after SOL expires
- Pay attention to tolling during COVID-19

Other Protective Measures

- Include strong “Promise Not To Sue” provision
- Liquidated damages provisions
- Plaintiff forfeiture of any future recovery

PAGA Webinar Series Schedule



- **Series 1: PAGA Peculiarities**
Tuesday, August 18, 2020 | [Webinar Recording](#)
- **Series 2: Discovery Practice and Sequencing**
Tuesday, September 1, 2020 | [Webinar Recording](#)
- **Series 3: Novel PAGA Theories and Discretionary Reductions in Penalty Awards**
Tuesday, November 10, 2020 | [Webinar Recording](#)
- **Series 4: Motion Practice, Manageability, and Trial Plans**
Tuesday, December 8, 2020 | [Webinar Recording](#)
- **Series 5: PAGA Settlement Strategies**
Tuesday, December 15, 2020

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Thank You!