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# HR Network

2025

**Ross Eberly**

**Summer Wynn**

**Eileen Leman**

# HR Network: US Legal Update 3 – Wage and Hour, Pay Equity, and More


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# Agenda

- Wage and hour developments
- Misclassification and independent contractors
- Pay equity laws and requirements
- Other trends and matters of interest

# Wage and Hour Developments

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# Developments in federal law

- Department of Labor (DOL) enforcement trends and priorities
  - Two general types of damages for wage and hour litigation: (1) unpaid amounts and (2) liquidated damages
  - Liquidated damages are a penalty equal to the unpaid amounts, unless employer can show action was in "good faith" and had reasonable grounds for believing it was not a violation of the law.
  - DOL historically sought liquidated damages in litigation.
  - Beginning in 2010, DOL also sought liquidated damages in pre-litigation investigations and settlements.


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# Developments in federal law

- DOL enforcement trends and priorities
  - **DOL Field Assistance Bulletin (FAB) 2025-3**
  - Interpreted 29 U.S.C. § 216(c)
  - DOL may no longer request liquidated damages in any pre-litigation investigation or resolution.
  - DOL will not seek liquidated damages prior to filing a lawsuit.


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# Developments in federal law

- DOL enforcement trends and priorities
  - **DOL Field Assistance Bulletin (FAB) 2025-3**
  - Employers facing DOL investigation now have greater incentive to settle pre-litigation.
  - Civil Monetary Penalties (CMPs) still available
  - CMPs are awarded for repeated or willful violations. They are inflation-adjusted and vary based on type of violation.
  - Max overtime and minimum wage violations: **$2,515**


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# Key minimum wage updates

| Jurisdiction | Changes |
|---|---|
| California | • Effective January 1, 2026, the state's minimum wage will increase to **$16.90/hour**.<br>• Exempt salary threshold to rise to **$70,304.** |
| California cities | • Berkeley: **$19.18/hour** (July 1, 2025)<br>• Los Angeles: **$17.87/hour** (July 1, 2025)<br>• Mountain View: **$19.20/hour** (January 1, 2025)<br>• Palo Alto: **$18.20/hour** (January 1, 2025)<br>• San Diego: **$17.25/hour** (January 1, 2025)<br>• San Francisco: **$19.18/hour** (July 1, 2025)<br>• Santa Monica: **$17.81/hour** (July 1, 2025) |


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# Key minimum wage updates

| Jurisdiction | Changes |
|---|---|
| Colorado | • Effective January 1, 2026, the state minimum wage is **$15.16/hour.**<br>• Denver minimum wage to increase to **$19.29/hour.** |
| Michigan | • Effective January 1, 2026, the state's minimum wage is **$13.73/hour.** |
| New York | • Effective January 1, 2026, NYC area minimum wage to increase to **$17.00/hour.** |
| Federal contractors | • Executive Order 13658 minimum wage rate increased to **$13.30/hour** on January 1, 2025 (revoked Biden administration $15/hour minimum). |


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## Federal DOL

# Only bona fide expense reimbursements may be excluded from the regular rate

- The DOL issued Opinion Letter FLSA2024-01, which addresses whether per diem expense payments for tools and equipment may be excluded from the regular rate when calculating overtime under the FLSA. **The DOL made clear that only bona fide expense reimbursements may be excluded from the regular rate.**
  - *First*, if the amount paid as a reimbursement to an employee is disproportionately more than their pay, the actual or approximate amount of the incurred expense may be excluded from the regular rate and only the excess amount must be included in the regular rate calculation. *See* 29 C.F.R. § 778.217(c)(1).
  - *Second*, the Opinion Letter notes that the DOL does not require or endorse a specific methodology for approximating employee expenses. Instead, the DOL indicates the FLSA's regulations are flexible on this issue and that as long a method is capable of reasonably approximating employees' actual expenses, it will comply with the FLSA.


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# Colorado

## Holiday incentive pay must be included in regular rate

- In *Hamilton v. Amazon.com Services LLC*, the Colorado Supreme Court ruled that, under Colorado Overtime and Minimum Wage Pay Standards (COMPS) Order 39, **holiday incentive pay** must be counted in the regular rate of pay for calculating overtime for non-exempt employees in Colorado.
- The Colorado Supreme Court's decision deviates from the federal Fair Labor Standards Act (29 C.F.R. § 778.203(c)).
- ***Recommendation***: Colorado employers covered by COMPS may want to review their current policies and practices, and distinguish "holiday pay" (pay for non-work hours on a holiday) from "holiday incentive pay" (pay for working on a holiday) to ensure the latter is included in the regular rate calculation for purposes of overtime.


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# Illinois

# Performance bonuses must be included in the regular rate

- In *Mercado v. S&C Electric Company*, the Illinois Supreme Court held that employers violated the overtime requirements of the Illinois Minimum Wage Law by not including performance-based compensation when calculating an employee's regular rate for purposes of overtime.
- The court did not agree with the employer's argument that the performance-based pay was properly excluded from the regular rate because performance-based compensation does not constitute "gifts" or "other amounts" under the statute.
- The Illinois Supreme Court also held that an employer can be liable for penalties if it pays overtime wages after they are due, and retroactive payments post-employment may not insulate an employer from liability.


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## Washington state

# Court of Appeals emphasizes penalties for meal period violations

- In *Androckitis v. Virginia Mason Medical Center*, the Washington State Court of Appeals held that the remedy for meal period violations includes three components: (1) payment of time worked during the missed or non-compliant meal period; *plus* (2) 30 minutes of pay as a penalty; *plus* (3) double damages on unpaid amounts as a willfulness enhancement.
  - **Recommendation**: Washington employers should take steps to ensure employees take required meal and rest periods, and any meal period waivers should be clearly documented.


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# Massachusetts

## Retention bonus not considered wages

- The Appellate Division of the Massachusetts District Court held in *Nunez v. Syncsort Incorporated* that a retention bonus that the employer allegedly owed to the employee did not constitute wages within the meaning of the Massachusetts Wage Act.
  - *Nunez* involved a former employee who was terminated and, one week after his termination, filed suit for the employer's alleged failure to pay him a retention bonus under an agreement he signed at the onset of his employment.
  - Nunez argued that the retention bonus was due on his final day of employment because the Massachusetts Wage Act requires discharged employees to be paid all wages owed to them on their day of discharge.
- The court's ruling provides support that, under the Wage Act, the definition of "wages" is construed narrowly.


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# Massachusetts
# Wage Act may apply to out-of-state, remote workers

- In *Dubois v. Staples, Inc.*, a former remote sales associate based in Rhode Island worked for a Massachusetts-based Staples. The sales associate sued for alleged unpaid commissions under the Massachusetts Wage Act.
- The Massachusetts Superior Court held that the Wage Act does not only apply to employees located within Massachusetts. It also protects out-of-state employees so long as Massachusetts has the most significant relationship to plaintiff's employment relationship.
  - The court found that Massachusetts had the most significant relationship to the plaintiff's employment because her sales territory covered Massachusetts, she traveled to Massachusetts and the decision to deny her commission was made by Massachusetts employees.
- **Recommendation**: Employers operating in Massachusetts should be aware that remote workers may nevertheless be protected under Massachusetts law, which provides treble damages plus attorney's fees for failure to comply with the Wage Act.


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# New Jersey
# Commissions are wages

- The New Jersey Supreme Court unanimously ruled in *Rosalyn Musker v. Suuchi, Inc.* that commissions are wages under the New Jersey Wage Payment Law (WPL).
- The WPL defines “wages” as the “direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis” but “excluding any form of supplementary incentives and bonuses.”
  - The court emphasized that this definition of wages includes commissions.
- Employers who violate the New Jersey WPL are liable for unpaid wages, plus up to two times that amount.


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# Pennsylvania

## Federal court rules ‘walking time’ is compensable under Pennsylvania law

- In *Davis v. Target Corp.*, the District Court held that time spent “walking” from the entrance of a warehouse to the location of the time clock is compensable under the Pennsylvania Minimum Wage Act, affirming that Pennsylvania does not recognize the *de minimis* doctrine, so even nominal amounts of compensable time must be paid.
- Under federal law, such time is non-compensable.
- **Recommendation**: Pennsylvania employers should review time clock placement, especially at large facilities, and review timekeeping policies.


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# Utah
# Earned Wage Access Services Act

- Utah has passed H.B. 279, known as the Earned Wage Access Services Act, which aims to regulate earned wage access (EWA) providers.
  - “Providers” is defined to include a person engaged in the business of offering earned wage access but not an employer that advances a portion of earned wages directly to employees or independent contractors.
- To operate as an EWA provider in Utah, entities must register with the Division of Consumer Protection, submit an application, pay a fee and provide a copy of the agreement used with consumers.
- The act also includes several consumer protection measures and prohibitions.
- Both Indiana and Maryland have also passed EWA laws. The Maryland EWA law is set to take effect October 1, 2025.


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## New York

# Updates to manual worker pay provisions of NYLL Section 191

- Amendments to the manual worker pay provisions of New York Labor Law Section 191:
  - Manual workers will not be able to receive liquidated damages for a first late pay violation.
  - The clock on liquidated damages will start ticking after the second violation, requiring employers to pay interest for the weeks they paid workers on a semimonthly basis instead of 100% of the late-paid wages.
- The state's press release provides, in part:
  - "Many small businesses are unaware of the weekly [pay] requirement for classes of manual workers, pay the workers in-full and semi-monthly, and then are sued for large amounts of money despite already paying their employees full wages. To provide relief to businesses, while still ensuring workers are paid timely and in full, Governor Hochul signed legislation amending the law to clarify that manual workers are not immediately entitled to liquidated damages if they were paid regularly on at least a semi-monthly basis."


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# Oregon
# New pay stub explanation requirements for new hires

- Oregon passed SB 906, which includes new pay stub explanation requirements that employers must provide at the time of hire.
- Those requirements:
  - The regular pay period
  - A list of all types of pay rates employees may be eligible for, all benefit deductions and contributions, and every kind of deduction that may apply
  - The purpose of deductions that may be made during a regular pay period
  - Allowances claimed as part of minimum wage, such as lodging, tips or meals
  - Employer-provided benefits that could appear on itemized statements as contributions and deductions
  - All payroll codes used for pay rates and deductions, along with a detailed description or definition of each code


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# Minnesota
## New meal and rest break rules

- Minnesota has approved amendments to its meal and rest break requirements pursuant to SF 17.
- Effective January 1, 2026, employers must:
  - Allow employees “a rest break of at least 15 minutes or enough time to utilize the nearest convenient restroom, whichever is longer” within every four hours of consecutive work.
  - An employer must allow employees working for “six or more consecutive hours a meal break of at least 30 minutes.”
- The amendments also include new remedies. An employer who doesn’t provide the allotted break is liable to the employee for the time plus liquidated damages.
- This increase in penalties is a growing trend.


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# Ohio

# New requirements under the Pay Stub Protection Act

- Similarly, the Ohio Pay Stub Protection Act mandates that employers provide employees with a written or electronic pay statement that includes the following:
  - Employee's name and address
  - Total gross wages earned by the employee during the pay period
  - Total net wages paid to the employee for the pay period
  - A listing of the amount and purpose of each addition to or deduction during the pay period
  - The date of payment and covered pay period
  - For an employee who is paid on an hourly basis, all of the following:
    - The total number of hours worked
    - The hourly wage rate
    - The employee's hours worked in excess of 40 per week
- While employers can be penalized for failure to comply, Ohio employees do not have a private right of action and may instead report any violation to the Ohio Director of Commerce.


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# Other wage and hour updates

- In **California**, effective January 1, 2025, the DIR adjusted the computer software professional's minimum
  - Hourly pay rate from $55.58 to **$56.97**
  - Monthly salary from $9,646.96 to **$9,888.13**
  - Annual salary from $115,763.35 to **$118,657.43**
- **Louisiana** extends deadline to provide separation notices to the state from three days to 10 days and mandates electronic delivery.
- **Washington** amends personnel access laws to add definition of "personnel file," timing requirements and private right of action.
- The **DOL** withdrew its 80/20 rule for tipped employees and reinstated the Dual Jobs Rule.
- The **DOL** also issued a memorandum advising that it will no longer request or collect liquidated damages in connection with the pre-litigation resolution of wage and hour investigations for unpaid minimum wages and overtime compensation.

# Misclassification and Independent Contractors

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# The DOL's reconsideration of the 2024 Independent Contractor Rule

- On May 1, 2025, the United States DOL Wage and Hour Division announced it would not enforce or apply the Biden-era 2024 Final Rule regarding independent contractor classification (2024 Rule).
- Instead, the DOL will now rely on a test from 2008 to determine whether an employee is an independent contractor or employee.
- The 2024 Rule remains in effect for private litigation.


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# The 2024 Rule

- The 2024 Rule provided for an employee-friendly analysis that focused on a review of the "totality of the circumstances" to ascertain whether a worker was "economically dependent" on an employer.
- These six factors included:
  1. The nature and degree of an employer's control over the worker
  2. The worker's opportunity for profit or loss
  3. Any investments by the workers and the employer
  4. The degree of permanence of the working relationship
  5. The extent to which the work performed is integral to the employer's business
  6. The amount of specialized skill and business initiative required


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# 2024 Rule litigation

- Business groups have challenged the 2024 Rule in courts across the country. The main argument in these cases is that the 2024 Rule was arbitrary, capricious and imposed an undue burden on businesses.
- However, no court has halted or enjoined the 2024 Rule, and the DOL has been largely successful in getting these cases dismissed whether on the merits or based on lack of standing.
- There are a few appeals of these dismissals, but it is likely that these cases will be stayed. For example, in one case pending before the Fifth Circuit (*Frisard's Transp., LLC v. United States*), the Court of Appeals stayed the proceeding after the government submitted a status report noting the DOL was in the process of reconsidering the 2024 Rule in the litigation.


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# The ‘New’ 2008 test

- On May 1, 2025, the DOL directed investigators to analyze a worker’s status under the “economic realities” test.
- This more traditional test looks at various factors to determine whether a worker is actually in business for themselves (and therefore a contractor) or dependent on the employer (and thus an employee).
- These factors include, but are **not limited to**:
  1. The extent to which the services are integral to the principal’s business
  2. The permanency of the relationship
  3. The contractor’s investments in facilities or equipment
  4. The nature and degree of control by the hiring entity over the contractor
  5. The contractor’s opportunity for profit or loss
  6. The degree of independence with which the contractor organizes and operates their business
- The economic reality test is widely considered more employer-friendly.


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# Colorado amends State Wage Act

- House Bill 25-1001, effective August 6, 2025
- Increased penalties for misclassification:
  - **$5,000** for a willful violation (intentional or reckless)
  - **$10,000** if not remedied within 60 days after the Division of Labor makes a finding of misclassification
  - **$25,000** for a second or subsequent willful violation within five years
  - **$50,000** for a second or subsequent willful violation not remedied after 60 days after the state DOL makes a finding of misclassification


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# Colorado amends State Wage Act

- House Bill 25-1001, effective August 6, 2025
  - Expanded employee protections:
    - An adverse action that occurs within 90 days of protected activity can create a presumption of retaliation.
    - Protected activity expanded to include “raising concerns in good faith about compliance” or “otherwise providing information as to legal rights and remedies.”
    - Compensatory damages available as a remedy, in addition to, e.g., reinstatement, backpay, liquidated damages and injunctive relief.


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# Colorado amends State Wage Act

- House Bill 25-1001, effective August 6, 2025
  - Enhanced ability for cities and municipalities to enforce the act.
  - Employers can now only recover their attorney fees if the employer makes a full tender of the amount demanded by the employee and the court later finds the suit lacked “substantial justification.”
  - Expanded definition of “employer” to include those who own 25% or more of the entity, unless they have delegated full day-to-day control.


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# Massachusetts allows rideshare drivers to unionize

- Unionization and Collective Bargaining for Transportation Network Drivers Initiative
  - On November 5, 2024, MA voters approved a ballot measure to allow rideshare drivers to unionize.
  - MA rideshare drivers are classified as independent contractors, so they do not receive National Labor Relations Act (NLRA) protections.
- Under the initiative, the initial process for forming a union is easier than under the NLRA.
- Rideshare companies await to see if a union will secure enough support to become an exclusive bargaining representative.


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# California's Freelance Worker Protection Act (FWPA)

- Requires contracts with independent contractors providing "professional services" valued at least $250 to be written, effective January 25, 2025.
  - The contracts must contain key information, such as an itemization of all services to be provided by the contractor and the dates for payment.
  - Hiring parties must provide a copy of the written contract, either physically or electronically, to the contractor and must retain a copy of the contract for at least four years.
- Aggrieved contractors can sue for violations and recover reasonable attorneys fees and costs, injunctive relief, and other remedies deemed appropriate by the court.


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# New York City's Freelance Isn't Free Act (FIFA)

- Effective August 28, 2024, New York City's FIFA provides certain protections to freelance workers including: (1) a written contract requirement for services valued at $800 or more, and (2) a payment deadline within the contract (typically within 30 days).
- The New York Attorney General can bring civil actions against hiring parties for violations.
- In April 2025, the New York Appeals Court found that a FIFA claim can be brought even if a freelance worker had assistants, despite the FIFA definition of a "freelance worker" as "any natural person or any organization composed of *no more than one natural person*, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation." *Chen v. Romona Keveza Collection LLC*

# Pay Equity Laws and Requirements

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# Federal landscape: Pay equity and transparency

- Equal Pay Act and Title VII: Foundational frameworks
- OFCCP pay equity audits for federal contractors
- EEOC focus on systemic pay disparities
- Shifts from Biden to Trump administration priorities
- No sweeping federal pay transparency law – state momentum drives practice


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# New laws: New Jersey and Illinois

- **New Jersey (June 1, 2025):** Job postings from employers with 10+ employees must include a pay range; internal transfers are covered by the law.
  - Covered employers must disclose a pay range in each job posting for new jobs and transfer opportunities, as well as a general description of benefits and other "compensation programs."
  - **Penalties:** Civil penalty of up to $300 for the first violation and $600 for each subsequent violation.
- **Illinois (January 1, 2025):** Job advertisements from employer with 15+ employees must disclose the pay scale and benefits; statute expanded annual reporting.
  - **Penalties:** Opportunity to cure, with civil penalties up to $10,000.


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# Washington state amendments

## Equal Pay and Opportunities Act (EPOA) (2023)

- Applies to employers with 15+ employees.
- Job postings must disclose salary or wage scale and benefits.
- **Penalties:** Private right of action; damages, attorneys fees.

## EPOA amendment (effective July 27, 2025)

- Provide a five-day grace period for employers to correct non-compliant job postings after receiving written notice.
- The cure period is only in effect until July 27, 2027.
- Employers that are “scraped” or copied and published without the employer’s consent are now exempt from the EPOA requirements.


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# Colorado state law primer

## Equal Pay for Equal Work Act (EPEWA) (2021)

- Colorado Department of Labor issued final regulations that took effect January 1, 2024.
- EPEWA applies to all postings for roles that could be performed in Colorado (including remote).
  - Pay range and benefits must be disclosed
  - Notice obligations for internal promotions
- Post-selection notices
- **Penalties:** $500 – $10,000 per violation


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# California state law primer

- Applies to employers with 15+ employees.
- Pay scales must be in job postings and made available to current employees upon request.
  - Benefits, bonuses and perks not required
- Expanded annual pay data reporting to Civil Rights Department (100+ employees)
- **Penalties:** $100 – $10,000 per violation; increased scrutiny for repeat offenders
  - Penalties are $100 per employee for initial pay data reporting failures; $200 per employee for subsequent.


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# New York and New York City

- NYC (2022): Applies to employers with 4+ employees. Salary ranges required in job postings.
- NY state (2023): Expanded the NYC law, requiring disclosure statewide.
- Enforcement via NYC Commission on Human Rights and NY State Department of Labor
- **Penalties:** Civil fines, corrective orders and reputational risk


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# Trends and recommendations

**Trends**

- More state laws, expansion of reporting obligations (EEO-style pay data)
- Increased litigation risk for noncompliance
- Shift from compliance to closing actual pay gaps

**Recommendations**

- Audit postings across jurisdictions for compliance
- Conduct privileged pay equity audits
- Train HR, recruiting and legal teams
- Monitor emerging legislation and litigation trends

# Other Trends and Matters of Interest


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# California
# PAGA updates

- **California Private Attorneys General Act of 2004 (PAGA)**
  - PAGA authorizes representative actions, whereby employees are "deputized" by the state to bring claims on behalf of other allegedly "aggrieved" employees and seek recovery of civil penalties on behalf of the state for violations of the California Labor Code.
- **"New" PAGA amendments:** On July 1, 2024, Governor Gavin Newsom signed into law two bills (AB 2288 and SB 92) making several changes to the statute:
  - Standing – an employee may only seek penalties for violations they personally suffered
  - New "cure" opportunities for certain violations
  - Reformed civil penalty amounts and structure
  - Elimination of derivative or "stacking" of civil penalties for certain violations
  - Share of penalties distributed to the employees increased from 25% to 35%
  - New early evaluation and resolution procedures (dependent on employer size)
  - Clarification of "pay period" definition
  - New PAGA also grants trial courts some authority to impose manageability requirements to "ensure that the claim can be effectively tried"


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# ‘New’ PAGA: Strategic considerations

- **Two new pathways for early resolution of PAGA litigation**
  - For large employers (100+ employees):
    - After a lawsuit is filed, the employer can request a stay of the litigation and an early evaluation conference (EEC)
  - For small employers (<100 employees):
    - Can present a “cure plan” to the state LWDA within 33 days of notice
    - LWDA can hold a conference to determine sufficiency of plan
    - If no conference is held, the employer can also request an EEC
- **Taking corrective action to cure or limit violations can limit penalties**
  - Cure option for wage statement violations:
    - Failure to include name/address of the employer can be cured by providing written notice of the correct information; and failure to include other required information can be cured by providing fully compliant wage statements
  - Cure option for violations other than wage statements:
    - Employer may cure by correcting the violation and making the employee “whole” by paying any unpaid wages +7% interest, liquidated damages and attorneys fees.
  - Penalties decrease significantly if employers take corrective action or the incidents are isolated.
    - Previously: generally, $100 per pay period per violation
    - Isolated incidents: $50 per pay period per violation
    - Good faith attempt at compliance after PAGA notice: $30 per pay period per violation
    - Good faith attempt at compliance prior to PAGA notice: $15 per pay period per violation


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# ‘New’ PAGA: Additional considerations

- **Arbitration**
  - “Representative” PAGA claims cannot be compelled to arbitration as a matter of California law; however, “individual” PAGA claims may be compelled to arbitration under an otherwise valid and enforceable arbitration agreement.
  - Prior to the 2024 amendments, a PAGA lawsuit could be maintained by any current or former employee who experienced at least one of the alleged Labor Code violations. This impacted the arbitration question for many employers, particularly smaller employers due to the additional costs of arbitration.
  - Under New PAGA, an employee may only seek penalties for violations they personally suffer and prove in individual arbitration. This increases the potential for arbitration to efficiently limit the scope and cost of any future representative proceedings in court.
- **Are ‘Headless’ PAGA claims permitted?**
  - Concept of a “headless” PAGA claim refers to a plaintiff bringing **only** representative claims, and not individual claims. Plaintiffs have attempted this to avoid being compelled to arbitrate individual PAGA claims.
  - California appellate courts are split as to whether “headless” PAGA claims are permitted.
  - On April 16, 2025, the California Supreme Court took up this issue on its own motion and will address two questions:

    1) Does every PAGA action necessarily include both individual and non-individual PAGA claims, regardless of whether the complaint specifically alleges individual claims?

    2) Can a plaintiff choose to bring only a non-individual PAGA action?
  - Until the court rules, it is unclear whether the court will limit its opinion to “old” PAGA or address the issue under “new” PAGA.


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# California

## Captive audience law (SB 399) – pending challenges

- California's captive audience law (SB 399), which took effect January 1, 2025, prohibits employers from discharging or disciplining employees for refusing to attend mandatory employer-sponsored meetings.
- In response to SB 399, the California Chamber of Commerce and California Restaurant Association filed a federal lawsuit on December 31, 2024, challenging SB 399 on constitutional and preemption grounds.
- **Recommendation*:*** While the outcome of the challenge is still uncertain, employers should assess meeting policies and practices, as well as their risk profile.


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# California
# New ‘social compliance audit’ reporting requirement

- New reporting requirements for employers that conduct a “social compliance audit.”
  - “Social compliance audit is defined as “a voluntary, nongovernmental inspection or assessment of an employer’s operations or practices to evaluate whether the operations or practices are in compliance with state and federal labor laws, including, but not limited to, wage and hour and health and safety regulations, including those regarding child labor.”
- While employers are not required to conduct such audits, when they do, they must post a clear and conspicuous link on their website to report the detailed findings of these audits.
- These detailed findings must include certain required information, such as whether children work for the employer, and whether the employer engages in or supports the use of child labor.


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# California
# Law against mandating driver's license in job posting

- Under SB 1100, California has made it unlawful for employers to include a statement in a job advertisement, posting, application or other material that an applicant must have a driver's license, unless the employer both:
  - Reasonably expects driving to be one of the job functions
  - Reasonably believes using alternative transportation would not be comparable in travel time or cost to the employer
- Under the law, "alternative transportation" includes, but is not limited to, using a ride-hailing service or taxi, carpooling, bicycling or even walking.


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# Multiple states adopt new heat safety requirements

- **Nevada**
  - Covered employers must complete a job hazard analysis and, depending on the results of the analysis, adopt a written Heat Illness Prevention Plan, implement emergency response procedures, monitor affected employees, and train employees to recognize, and minimize, heat illness hazards.
- **Maryland**
  - Maryland Occupational Safety and Health's new standard applies to all employers whose employees are exposed to an indoor or outdoor heat index of 80 degrees Fahrenheit for more than fifteen minutes in an hour. At a heat index of 90 degrees or more, high-heat procedures apply.
- **California**
  - Cal/OSHA issued a first-of-its-kind $276,425 citation for a willful violation of California's Heat Illness Prevention regulations.


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# New Jersey

## Strengthened job protections for immigrant workers

- New Jersey imposes penalties for employers that either disclose or threaten to disclose an employee's immigration status for the purpose of concealing a violation of New Jersey's wage, benefit and tax laws. Penalties include:
  - $1,000 for an initial violation
  - $5,000 for a second violation
  - Up to $10,000 for any subsequent violation
- Penalty amounts will depend upon the specific facts and circumstances involved, including the significance of the violation, the good faith of the employer and the size of the employer's business.


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## Washington

# Striking workers are eligible for unemployment benefits

- Washington passed SB 5041, which allows individuals unemployed due to a labor strike to receive up to six weeks of unemployment insurance benefits following a qualifying strike or lockout event.
- The law takes effect January 1, 2026.
- Benefits would start 15 to 21 days after the strike begins, depending on the day the strike starts. If the contract is resolved before that time, no benefits would be issued.

# Thank you!

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# Ross Eberly

Ross focuses his practice on corporate and transactional employment matters and is a trusted counselor to companies at every stage of growth. He represents clients from a diverse set of industries – ranging from technology and life sciences to media and entertainment, consumer goods, and health and beauty. Ross has advised clients on the employment aspects of thousands of corporate transactions. He helps guide clients through critical employee matters and works with emerging growth companies to build, develop and protect their workforce.

**Ross Eberly**
**Partner**

+1 310 883 6415
reberly@cooley.com

# Summer Wynn

Summer Wynn’s practice encompasses employment litigation and counseling, environmental and land use litigation and counseling, and complex commercial litigation, including class actions. She has both trial and appellate experience representing clients in litigation.

**Summer Wynn**
**Partner**

+1 858 550 6030
swynn@cooley.com

# Eileen Leman

Eileen’s counseling practice includes contractor and Fair Labor Standards Act classification, international workforce expansion, complex employment agreements and policies, restrictive covenants, employment terminations and reductions in force, wage and hour law, and unlawful discrimination, harassment, and retaliation claims.

**Eileen Leman**
**Associate**

+1 213 561 3216
eleman@cooley.com