

**NO on HB 2205 – Lawsuit Scheme Threatens Every Employer in Oregon and Economic Recovery  
Creates a mechanism allowing outside suits in the name of the State for any statute including civil penalties**

The Private Attorney General Act (PAGA) in California confers a private right of action to individuals to prosecute labor code violations. Modeled after PAGA, HB 2205 goes *beyond* PAGA to allow outside entities to sue businesses under any state statute authorizing a state agency to take enforcement action with a civil penalty.

**PAGA has been disastrous for businesses in California – HB 2205 is, shockingly, worse!**

- California's PAGA statute has been litigated and modified multiple times since passage in 2003. In California, PAGA is specific to labor law. HB 2205 expands this concept dramatically and subjects Oregonians to potential lawsuits by outside entities in the name of the state based on nearly 200 different chapters and 75 different state agencies, commissions, and boards.
- This legislation will decimate Oregon's state agencies currently responsible for enforcement and essentially privatize those functions to be managed by trial lawyers and the courts through lawsuits.
- HB 2205 will have an impact on every business, every non-profit and virtually every employer in Oregon, subjecting them to liability exposure never envisioned when enforcement statutes were adopted.

**HB 2205 destroys the legislative intent of virtually every statute seeking enforcement through civil penalties**

- Legislators can choose to allow for lawsuits when they pass legislation. Often, they believe agency enforcement including civil penalties is a preferred solution.
- Employers have negotiated a variety of employment laws and consumer protections laws in good faith with proponents, legislators and agencies to avoid a private right of action and to avoid inclusion under the section of the Unlawful Trade Practices Act that has a private right of action and the ability to file a class action lawsuit. HB 2205 negates all work previously done to allow for education and enforcement, but not lawsuits related to those issues.
- Further, it allows these lawsuits to be filed without the requirements of certifying a class. Class action lawsuits are complicated because of the investigative work to identify and certify class members. PAGA cases are essentially class action suits but require that only one person feel aggrieved in order to file.

**HB 2205 benefits one special interest group – trial attorneys**

- Examples from California show how little employees actually receive as a result of PAGA claims. Individuals filing claims can only receive 25% of any penalties, while trial attorneys benefit from contingency fees, awards of attorney's fees and from reimbursement of costs.
- In their review of PAGA court settlements, the California Labor and Workforce Development Agency said "This review has revealed that the substantial majority of proposed settlement agreements proposed to superior courts and filed with the LWDA did not sufficiently protect the interest of workers and the state."

**HB 2205 has a steep cost for businesses and the state**

- HB 2205 undermines existing enforcement authority of ALL state agencies. Even if it is scaled back to focus solely on BOLI, it will divert agency attention away from education and enforcement in order to focus on responding under tight timelines to PAGA notices. No state agency will operate efficiently or effectively under the new lawsuit regime established by HB 2205.
- California businesses have spent unprecedented sums defending themselves against PAGA claims or settling those claims and they are only faced with PAGA actions for violations of labor law. The impacts of the proposal in HB 2205 are impossible to estimate because no state has a law that so dramatically subjects businesses to lawsuits related to every enforcement action available in statute.

**HB 2205 will deter future investment and create dangerous risk exposure for any Oregon business or employer.**

**We Urge Opposition to HB 2205!**



We Feed You





## OREGON LIABILITY REFORM COALITION

### Compliant Employers Forced to Seek Citations to Avoid Costly PAGA Suits

In California PAGA Claims, Employers Lose, Employees Get Little, and Trial Lawyers Win Big

The California PAGA experience has created disastrous situations for employers and employees alike. Employers can't offer any flexibility to employees because of the fear of PAGA lawsuits. In the end, even employees who sue do not see any real monetary award, while their attorney benefits from large contingent fee awards and reimbursement of expenses.

In their review of PAGA court settlements, the California Labor and Workforce Development Agency said:

- "This review has revealed that the substantial majority of proposed settlement agreements proposed to superior courts and filed with the LWDA did not sufficiently protect the interest of workers and the state."
- "However, the number and type of inadvisable and unlawful settlement provisions which are being proposed and presumably approved militate for the more frequent submission of comments, with the goal of influencing settlements in a positive way."
- "Accordingly, the decision about whether to cite or sue an employer is a complex one because, even if the employer is generally found to be compliant with labor laws, the employer frequently asks the LWDA to cite and/or sue the employer, so that aggrieved plaintiffs won't otherwise be able to pursue claims against the employer for the claimed violations."

#### Real Settlements and Real Stories from California Employers Impacted by PAGA:

- In October of 2018, a retailer agreed to a \$65 million PAGA settlement because its cashiers had not been provided with seats. The trial attorneys representing the employees will receive \$21 million, while affected employees will each receive an average of \$108 ([Read more](#))
- In a [case](#) concerning an employers' failure to pay for time spent in training or when traveling between designated meeting places and work assignments violating overtime requirements, a \$6 million settlement was approved that allocated only \$20,000 to the PAGA claim and awarded \$2 million to plaintiffs' attorneys in addition to \$46,000 in costs
- A court approved a \$7.75 million settlement providing \$2.3 million to attorneys and only \$1.08 for each affected individual ([Read more](#))

#### PAGA Hurt Us – And Our Workers by Anne Hackney, CFO of Dytran Instruments, Chatsworth, CA

"In the case brought against our company, we were accused of denying workers timely meal breaks, otherwise known as the "five-hour rule." Our workers asked, collectively, if they could report to work at 6 a.m. instead of 7 a.m. so they could finish their day earlier, at 2:30 p.m. We allowed this flexibility for our workers. At this time, we asked them to move their lunch time to 10:30-11 a.m. However, they felt this was too early; they asked to take lunch later because they wouldn't be hungry at 10:30 a.m. They also stated that it would make the end of the day go by faster if they ate a little later. It was their choice. No one was injured and no one lost pay – there were no damages. It was as simple as that, a collective morale-boosting employee request, and we saw no harm in it. It meant, however, that the first shift took their lunch break more than 5 hours after they began work – in violation of the state's five-hour rule.

"Unfortunately, this flexible lunch was taken advantage of by a former employee who filed a lawsuit against our company, even though this former employee – who became the designated class representative – had never even worked that shift. The lawsuit was filed under the state's Private Attorney General Act. Commonly known as PAGA, it allows employees to act as a state regulator and bring legal action – often with costs and penalties against the company that are far, far higher than what a state regulator would normally seek.

"Lawsuits hurt everyone, not just business owners. Being forced to pay exorbitant costs to attorneys can force businesses to cut jobs, bonuses and benefits in order to stay open in the face of huge settlements. We were one of those companies." ([Read more here](#))

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## OREGON LIABILITY REFORM COALITION

### **In PAGA Claims, Penalties Aggregate, Causing Massive Settlements for Minor Infractions**

The California Labor and Wage Division has said the following about PAGA claims based on their experience:

- “Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, reflecting the failure of many private plaintiffs’ attorney to fully protect the interests of the aggrieved employees and the state.”
- “Among other things, cases investigated by the state tend to resolve much more quickly with a better outcome for workers in terms of back wages recovered, promptness of payments, and commitments to future compliance, than private PAGA litigation. They also save employers considerable litigation costs and potential liability for plaintiffs’ attorneys’ fees.”
- “Because one of the concerns expressed about PAGA is that some plaintiffs and attorneys pursue claims (frivolous and otherwise) only to settle quickly for little money, the numbers are worth investigating further.”

PAGA in California includes statutory penalties and stacking of those penalties along with other provisions that make the ultimate settlements reached far more expensive than any reasonable enforcement action would require. Details include:

- Statutory penalties of \$100 for every employee for every pay period after the first violation
- Statutory penalties of \$200 for each violation thereafter
- PAGA claims can go back one year and apply to all pay periods in that year for all employees
- The PAGA claim is based on ALL employees and not limited to employees who feel they have been aggrieved or injured
- According to the California Labor and Workforce Development Agency, 40% of PAGA notices were “curable” and the overwhelming majority of curable violations were for minor violations where the employer failed to state the inclusive dates of the pay period and the employer’s correct legal name and address. These minor infractions are often not cured by employers because they are unaware of the option to cure or the violations are part of a larger claim alleging multiple violations, so the employer does not engage to cure one part of the claim.
- HB 2205 has even higher penalties for claims for violations where a civil penalty isn’t assessed of \$250 per employee for every two-week period when the violation occurred.
- There is no provision in HB 2205 that allows defendants in enforcement actions to cure.

“PAGA is a complex legal process that has led to the unintended consequence of significant legal abuse. PAGA, in effect, encourages class action type lawsuits over minor employment issues because once a PAGA lawsuit has been filed, the employee (or class) plaintiff is suing on behalf of the state and the issues involved are no longer subject to arbitration. The threat of extended litigation, including wide-ranging discovery allowed when prosecuting civil claims in court, on behalf of an entire class of workers provides enormous pressure on employers to settle claims regardless of the validity of those claims.” - Democratic Assemblywoman Bianca Rubio explanation in bill analysis of AB-1654 (exempting construction industry collective bargaining agreements from PAGA) in 2018.

**Please Vote No on HB 2205 – Don’t Subject Oregon’s Employers and Workers to PAGA Lawsuit Abuses!**