ACRISURE®

August 2024 | Volume 12 | Issue 4

THE REPORT

Legislative Update

Newsom, Businesses Agree on PAGA Reforms

GOVERNOR GAVIN Newsom, legislators and business groups have struck an agreement to reform a law that has become a costly thorn in the side of employers operating in California, the Private Attorneys General Act.

The deal averted a showdown over a business-backed initiative slated to be on the November ballot that would have repealed the law. The bill keeps the law intact while limiting frivolous litigation by allowing employers to make things right after a PAGA suit is filed.

PAGA allows workers who allege they have suffered labor violations, like unpaid overtime or being denied mandatory meal and rest breaks, to file suit against their employers rather than the typical route of filing a claim with the state Department of Labor Standards Enforcement.

The law essentially allows employees, represented by private attorneys, to stand in for the state and all their co-workers in suing their employer.

One reason workers pursue PAGA claims is the tremendous backlog that the DLSE faces, and they do so in the belief that the claim will be handled more quickly. However, a report by the Fix PAGA Coalition found that workers filing claims directly with the DLSE wait fewer than 10 months on average for their awards, compared to 23 months for PAGA court case awards.

Proceeds from settlements are split 25% with the employee who filed the case and the rest with the state, which collected more than $200 million in penalties in 2022.

The Fix PAGA Coalition's report found that non-profits, small businesses and other employers have paid out nearly $10 billion in PAGA case awards since 2013, with attorneys receiving the far bigger portion of the settlements.

Backers of the PAGA ballot initiative withdrew their measure in exchange for the legislation which was passed and signed by Newsom.

Highlights of New Law

Redefines 'standing' – It requires workers to personally experience the alleged violations brought in a claim.

Cure provisions – It expands the list of Labor Code violations that can be cured before a PAGA action commences, which could allow employers to avoid lawsuits by making employees whole after receiving notice of alleged violations.

Limits claims – It codifies a court's ability to limit the scope of claims presented at trial to better manage the complaint.

Reforms penalty structure – It caps penalties on employers that quickly fix policies and/or practices to make workers whole after they receive a notice of a PAGA action. It also caps penalties on employers that proactively comply with the Labor Code before receiving a PAGA notice.

See 'Package' on page 2

CONTACT US

Pleasant Hill Office
363 Civic Drive, 100
Pleasant Hill, CA 94523
Phone: 925-686-2860

Morgan Hill Office
15005 Concord Circle
Morgan Hill CA 95037
Phone: 408-842-2131

Sacramento Office
111 Woodmere Rd., Suite 290
Folsom, CA 95630
Phone: 916-970-2745

San Diego Office
5330 Carroll Canyon Rd, Suite 110
San Diego, CA 92121
Phone: 858-345-5787

License No. 0K07568

EEOC Issues New Workplace Harassment Guidance

THE EQUAL Employment Opportunity Commission has issued updated workplace harassment guidance for employers, increasing possible exposure to employee-initiated lawsuits.

These are federal guidelines, meaning that they open a new avenue for potential employment practices liability exposure. Employers should understand this new guidance to ensure they don't run afoul of the law and risk being sued by a worker.

The guidance includes the following:

Sex-based harassment

The guidance expands the definition of sex-based harassment to include harassment related to breastfeeding, morning sickness, contraception and decisions to obtain — or not obtain — an abortion.

VIRTUAL ICK: *Online harassment – by e-mail, social media or other fomat – may constitute workplace harassment under EEOC's new guidance.*

It also expands protections to include harassment based on sexual orientation and gender identity.

An example of the latter would be an employer intentionally and repeatedly using a name or pronoun that is inconsistent with the worker's gender identity, or denying access to bathrooms that are consistent with their identity.

Virtual harassment

The guidance states that harassment can occur in the "virtual work environment," such as through the firm's e-mail system, electronic bulletin boards, instant message systems, videoconferencing technology, intranet or official social media accounts.

The EEOC stated that while off-duty offensive social media posts sent on work systems generally don't constitute harassment, they may if they impact the workplace, such as if the postings are directed at a particular employee or employer and are referenced at work.

The agency also stated that even if offensive material is sent while off-duty on non-work systems, like using personal phones or tablets to text harassing messages or making derogatory posts on their own social media accounts, it could be considered illegal.

The takeaway

The EEOC has designated workplace harassment as an enforcement priority.

You should update your anti-harassment policies and procedures in your employee handbooks to reflect the changes to EEOC guidance. Managers and supervisors should be trained in the new guidance as well. ❖

Policies the EEOC Recommends

- Define what conduct is prohibited.
- Be comprehensible to workers, including those whom you have reason to believe might have barriers to comprehension, such as limited literacy skills or proficiency in English.
- Require supervisors to report harassment incidents.
- Offer multiple ways to report harassment.
- Identify points of contact to whom reports of harassment should be made, including contact information.
- Explain your firm's complaint process, including the anti-retaliation and confidentiality protections.

Continued from page 1

The Package Aims to Limit Frivolous PAGA Claims

The takeaway

Jennifer Barrera, CEO of the California Chamber of Commerce, said in a prepared statement: "This package provides meaningful reforms that ensure workers continue to have a strong vehicle to get labor claims resolved, while also limiting the frivolous litigation that has cost employers billions without benefiting workers."

While the legislation will not eliminate PAGA, all sides of the agreement predict it will go a long way towards reducing frivolous claims. ❖

Five Most Overlooked Tax Deductions

WHO AMONG us wants to pay the IRS more taxes than we have to? While few may raise their hands, Americans regularly overpay because they fail to take tax deductions for which they are eligible.

Let's take a quick look at the five most overlooked opportunities to manage your tax bill.

1. Reinvested Dividends

When your mutual fund pays you a dividend or capital gains distribution, that income is a taxable event (unless the fund is held in a tax-deferred account, like an IRA). If you're like most fund owners, you reinvest these payments in additional shares of the fund. The tax trap lurks when you sell your mutual fund. If you fail to add the reinvested amounts back into the investment's cost basis, it can result in double taxation of those dividends.[1]

Mutual funds are sold only by prospectus. Please consider the charges, risks, expenses, and investment objectives carefully before investing. A prospectus containing this and other information about the investment company can be obtained from your financial professional. Read it carefully before you invest or send money.

2. Out-of-Pocket Charity

It's not just cash donations that are deductible. If you donate goods or use your personal car for charitable work, these are potential tax deductions. Just be sure to get a receipt for any amount over $250.[2]

3. State Taxes

Did you owe state taxes when you filed your previous year's tax returns? If you did, don't forget to include this payment as a tax deduction on your current year's tax return. There is currently a $10,000 cap on the state and local tax deduction.[3]

4. Medicare Premiums

You may be able to deduct unreimbursed medical and dental premiums, co-payments, deductibles, and other medical expenses to the extent that the costs exceed 7.5% of your adjusted gross income. This includes most Medicare premiums.[4]

5. Income in Respect of a Decedent

If you've inherited an IRA or pension, you may be able to deduct any estate tax paid by the IRA owner from the taxes due on the withdrawals you take from the inherited account.[5]

Edward C. Rusnak
Joseph Yang
Sagemark Consulting
3000 Executive Parkway, Suite 400
P.O. Box 5154
San Ramon, CA 94583

Phone: (925) 659-0372
Fax: (925) 804-2472
Edward.Rusnak@PWFPartners.com

1. Investopedia.com, January 11, 2024
2. IRS.gov, 2024
3. IRS.gov, 2024
4. IRS.gov, 2024
5. IRS.gov, 2024. In most circumstances, once you reach age 73, you must begin taking required minimum distributions from a Traditional Individual Retirement Account (IRA). Withdrawals from Traditional IRAs are taxed as ordinary income and, if taken before age 59½, may be subject to a 10% federal income tax penalty. You may continue to contribute to a Traditional IRA past age 70½ as long as you meet the earned-income requirement.

The content is developed from sources believed to be providing accurate information. The information in this material is not intended as tax or legal advice. It may not be used for the purpose of avoiding any federal tax penalties. Please consult legal or tax professionals for specific information regarding your individual situation.

This material was developed and produced by FMG Suite to provide information on a topic that may be of interest. FMG Suite is not affiliated with the named broker-dealer, state- or SEC-registered investment advisory firm. The opinions expressed and material provided are for general information, and should not be considered a solicitation for the purchase or sale of any security. Copyright FMG Suite.

*Ed Rusnak & Joseph Yang offers securities and investment advisory services through Osaic FA, Inc., member FINRA/SIPC. **Osaic FA** is separately owned and other entities and/or marketing names, products or services referenced here are independent of **Osaic FA**. **Osaic FA** and its representatives do not offer tax or legal advice. Individuals should consult their tax or legal professionals regarding their specific circumstances.*

CRN-6823828-072324

Compliance Alert

Cal/OSHA's Indoor Heat Illness Regulations Take Effect

CAL/OSHA's indoor heat illness prevention regulations took effect July 24, requiring employers to implement safety measures when indoor workplace temperatures reach or exceed 82 degrees Fahrenheit.

The new rules apply to most indoor workplaces, such as restaurants, warehouses and manufacturing facilities, and require employers to provide water, rest, cool-down areas and training when temperatures exceed the threshold.

The standard requires employers who have indoor worksites with higher temperatures to take immediate steps to ensure they are in compliance with the new rules.

Under the standard, most requirements for additional protections start at the 82-degree trigger, but additional ones kick in at 87 degrees.

At that point, businesses would be required to take additional steps, when feasible, including cooling down the work areas, implementing work-rest schedules and providing personal heat-protective equipment.

Where workers wear clothing that restricts heat removal or work in high-radiant-heat areas, the additional requirements apply at 82 degrees.

THE MAIN REQUIREMENTS OF THE NEW STANDARD

Indoor Heat Illness Prevention Plan

Employers whose indoor workplaces may exceed the 82-degree threshold will need to create, maintain and make available to employees a heat illness prevention plan (HIPP), which all affected employees should be trained in and read. The plan covers all of the following.

CHILLIN': *Once indoor temperatures reach 82 degrees, employers are required to provide cool-down areas and access to fresh cool water.*

Access to a cool-down area

You must provide access to at least one cool-down area, where the temperature must be kept at below 82 degrees. The cool-down area should be blocked from direct sunlight, be shielded from other high-radiant heat sources and be large enough to accommodate the number of workers on rest breaks so they can sit comfortably without touching each other. The area should be as close as possible to work areas.

Cool-down rest periods

Encourage workers to take preventive cool-down rest breaks and allow those who ask for a cool-down rest break to take one. Workers should be monitored for symptoms of heat-related illness when they are taking such cool-down rests.

Access to water

You must provide access to potable water that is fresh, suitably cool and free of charge. The water shall be located as close as possible to work areas and cool-down areas.

Other Compliance Issues

The standard requires employers to:

- Provide first aid or emergency response to any workers showing heat illness signs or symptoms, including contacting emergency medical services.
- Closely observe new workers and newly assigned employees working in hot areas during a 14-day acclimatization period, as well as all employees working during a heatwave.
- Provide training to both workers and supervisors in the company's HIPP and prevention measures.

The takeaway

The solutions for many businesses will be installing air conditioning that ensures that temperatures never exceed the 82-degree threshold in an indoor workspace. While costly, it can reduce the need for employers to take any additional steps to protect employees against heat illness.

However, this may not be feasible in larger facilities like warehouses and production operations due to costs and difficulty in cooling a large area. ❖

Produced by Risk Media Solutions on behalf of Acrisure. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2024 all rights reserved.