



**Sierra J. Spitzer**

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Sierra has been practicing law in San Diego since 2004 with a focus on labor and employment issues, personal injury and business litigation on behalf of both individuals and business entities. She works closely with corporate counsel, human resource personnel, insurance companies and business owners, providing counseling and assistance in prevention, investigation and early resolution of employment and business related issues. She is also experienced at both prosecuting and defending these types of disputes and claims throughout the litigation process.

## ***MORE PAGA, MORE PROBLEMS***

### **What is PAGA?**

California Labor Code's Private Attorneys General Act of 2004 ("PAGA") allows individual employees to step into the shoes of the state enforcement agency and bring suit against their employers to recover civil penalties for violations of the California Labor Code on behalf of themselves and other current & former employees. Prior to its enactment, only the State could bring civil actions in court to enforce non-monetary provisions of the Labor Code.

### **Why Is PAGA So Problematic for Employers?**

- \* It imposes monetary fines for each violation of nearly every provision of the Labor Code
- \* If the Labor Code does not already provide for a penalty, PAGA imposes \$100 fine for the first violation and \$200 for each subsequent violation of the same provision.
- \* The fines can be assessed per employee and per pay period
- \* Tend to target minor/technical violations, often that do not impact employment conditions
- \* Prevailing plaintiffs recover attorney's fees and costs
- \* Often results in "stacking" claims for other violations
- \* Huge potential monetary exposure for employers

### **Why Are PAGA Claims on the Rise?**

- \* California Supreme Court/9<sup>th</sup> Circuit precluded use of PAGA waivers in arbitration agreements
- \* PAGA allows plaintiffs to avoid the rigorous class action certification requirements

### **Best Practices to Avoid PAGA Claims**

- \* conduct regular audits of wage statements, meal & rest periods, overtime pay, classification of exempt/non-exempt employees, classification as employer/independent contractor
- \* make sure meal period waivers in writing/proper documentation of meal breaks
- \* train managers/supervisors on basic wage and hour issues
- \* lengthen pay period
- \* exercise opportunity to cure certain wage statement violations