

# PAGA & CLASS ACTION COMPLIANCE GUIDE

## For California Construction Contractors

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# 1. Why This Handout?

Being an employer in California has always been a high-risk business, and now more so than ever. Between complicated labor laws, an aggressive plaintiffs' bar, sizeable statutory penalties, and a legal culture in which employees can pull up their rights on a smartphone during their (mandatory) lunch break, the practical burden of getting wage-and-hour compliance right falls directly on employers — and the burden of proving compliance falls there too.

The California Private Attorneys General Act of 2004 ("PAGA") transformed this burden into an industry. A single "aggrieved" employee, standing in the shoes of the Labor Commissioner, can pursue civil penalties for Labor Code violations affecting the entire California workforce of a company, with 65% of any penalty recovery going to the State. For a construction contractor with 100 field employees, a PAGA claim built on nothing more than defective wage statements and a few missed meal periods can be pled at seven figures before discovery even starts. And although the 2024 PAGA reform helped alleviate some of the catastrophic results, it did not make PAGA go away.

**This handout is written to answer the main question Contractors ask:**

*"I constantly hear about PAGA. What am I actually supposed to be doing differently on my jobsites, in my payroll, and in my paperwork?"*

**This guide is organized around those answers and includes a wage-and-hour audit checklist and a 60-day PAGA notice playbook.**

### Who this guide covers

Most California contractors have more than one kind of employee: field crews covered by one or more collective bargaining agreements, non-union field employees, shop and yard staff, and office, administrative, and management employees. This guide is written for all of them. A CBA can change some rules for the employees it covers, but it does not take those employees out of the Labor Code, and it has no effect on employees it does not cover. The audit topics in Section 5 should be reviewed for every group.

### How to read the guidance

Some rules in this guide apply to every employee. Others depend on the work the employee performs, because the work determines which wage order applies. Still others can be modified by a qualifying CBA, so the answer depends on what your particular agreement says.

### Two different kinds of CBA exemptions

California law treats CBAs in two very different ways. Several provisions of Wage Order 16 and the Labor Code exempt CBA-covered employees from specific wage-and-hour requirements, such as meal periods or daily overtime, and let the agreement's terms govern instead. A separate statute, Labor Code § 2699.6, exempts employees covered by a qualifying construction CBA from PAGA itself, without changing any underlying wage-and-hour requirement. Each exemption has its own conditions, and a CBA can satisfy one without satisfying the others. Section 8.4 explains the difference.

# 2. PAGA in 90 Seconds: The Original Statute

The Legislature enacted PAGA (Labor Code § 2698 et seq.), effective January 1, 2004, after finding that the State's labor enforcement agencies lacked the staff and funding to keep pace with Labor Code violations. Its solution was to deputize employees. An "aggrieved employee" could file a civil action on behalf of the State to recover civil penalties that, before PAGA, only the Labor Commissioner could assess. The Labor and Workforce Development Agency ("LWDA") is the real party in interest, and the employee sues as the State's proxy. For twenty years, until the June 2024 reforms described in Section 3, the statute worked as follows.

## Who could sue

Under the original statute, an "aggrieved employee" was any person employed by the alleged violator "against whom one or more of the alleged violations was committed," within the one-year limitations period. Courts read that language broadly. An employee who suffered a single Labor Code violation could pursue penalties for every other violation alleged, including violations he or she never personally experienced (*Huff v. Securitas Security Services USA, Inc.*, 2018). Standing survived settlement of the employee's individual claims (*Kim v. Reins International California, Inc.*, 2020), and it survived an order sending those individual claims to arbitration (*Adolph v. Uber Technologies, Inc.*, 2023).

Arbitration agreements offered only partial protection. Pre-dispute waivers of representative PAGA claims were unenforceable (*Iskanian v. CLS Transportation Los Angeles, LLC,* 2014). The U.S. Supreme Court later held that an employee's individual PAGA claim can be compelled to arbitration (*Viking River Cruises, Inc. v. Moriana*, 2022), but after *Adolph* the representative portion generally remains in court, often stayed until the arbitration is complete.

## Pre-suit notice and a very limited right to cure

Before filing suit, the employee had to give written notice to the LWDA and to the employer identifying the specific Labor Code provisions allegedly violated and the facts and theories supporting each claim. Since 2016, that notice has been filed online with a $75 fee. If the LWDA did not announce within 60 days that it would investigate (and it rarely did), the employee could file suit 65 days after the notice.

Employers had a narrow right to cure certain violations within 33 days of the notice, but that right did not reach the core wage-and-hour violations listed in Labor Code § 2699.5: the meal, rest, overtime, and minimum-wage claims that drive most PAGA litigation. For wage statements, cure was available only for missing pay-period dates or a missing employer name and address.

## The original penalty framework

Where a Labor Code provision carried its own civil penalty, the PAGA plaintiff recovered that penalty. For example, § 558 imposes $50 per underpaid employee per pay period for an initial overtime or meal-period violation and $100 for subsequent violations, and § 226.3 imposes $250 per employee for an initial wage statement violation and $1,000 for subsequent violations. Where the Labor Code specified no penalty, PAGA's default penalty applied:

- **$100** per aggrieved employee per pay period for the initial violation.
- **$200** per aggrieved employee per pay period for each subsequent violation. Appellate authority held the higher rate applied only after a court or the Labor Commissioner had notified the employer that it was

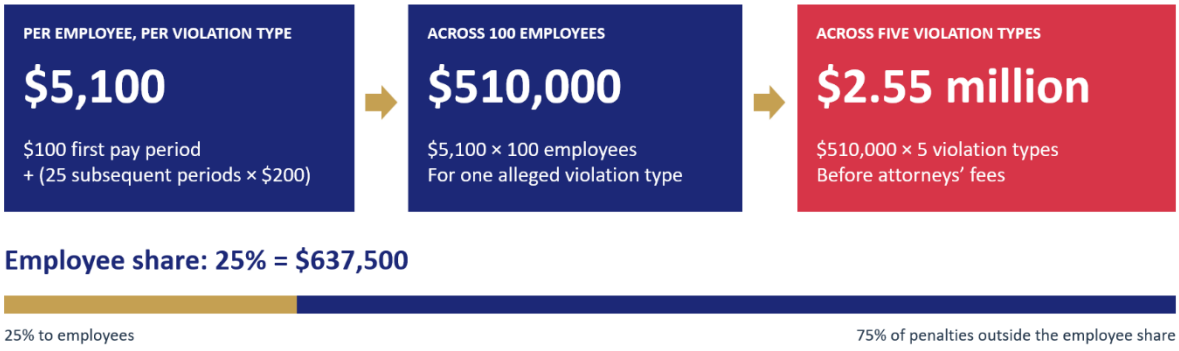
violating the Labor Code (Amaral v. Cintas Corp. No. 2, 2008), but plaintiffs routinely pled, and valued settlements at, the $200 figure.

- **Distribution:** 75% to the LWDA, 25% to the aggrieved employees.
- **Attorneys' fees:** Mandatory for a prevailing employee, and one-way. In settlements, fees commonly amounted to 35%-40% or more of the gross amount.
- **Stacking:** A single underlying violation could generate penalties under several provisions at once. After *Naranjo v. Spectrum Security Services, Inc.* (2022) held that unpaid meal and rest premiums are wages, one missed meal period routinely supported penalties for the meal-period violation itself, the resulting wage statement error (§ 226), and, for separated employees, waiting time (§ 203).

The only statutory brake was the court's discretion to award less than the maximum where the full amount would be "unjust, arbitrary and oppressive, or confiscatory." And in January 2024, the California Supreme Court held that trial courts could not strike PAGA claims as unmanageable (*Estrada v. Royalty Carpet Mills, Inc.*, 2024).

### How the math worked before the reforms (illustrative)

Assume 100 field employees, biweekly pay, a one-year PAGA period, and five alleged violation types, each pled at PAGA's default rate as affecting every employee in every pay period. Per employee, per violation type: $100 for the first pay period + (25 pay periods × $200 subsequent penalty) = $5,100. Across 100 employees, this totals $510,000. Across five violation types, this totals $2.55 million, before attorneys' fees. Only 25% of that (about $637,500) would have gone to the employees. That was the plaintiff's opening number, not a likely result, but it set the terms of most settlement negotiations.




## How PAGA differs from a class action

A class representative must persuade the court to certify the class before representing anyone else. That means showing an ascertainable and sufficiently numerous class, common questions that predominate, claims typical of the class, adequacy as a representative, and that a class action is the superior method. Under the original statute, a PAGA plaintiff had to clear none of those hurdles: after giving the LWDA notice, an employee who had suffered even one alleged violation could seek penalties for every violation alleged, on behalf of every current and former employee affected.

# 3. The 2024 PAGA Reforms — What Actually Changed

In June 2024, the Legislature passed a package of amendments that apply to PAGA notices filed on or after June 19, 2024; claims based on earlier notices remain under the original framework described in Section 2. The table below summarizes the changes, and the subsections that follow explain the ones that matter most for prevention.

| Topic | Original PAGA (notices filed before June 19, 2024) | After the 2024 reforms |
|---|---|---|
| Standing | Employed by the violator and suffered one or more of the alleged violations; could pursue penalties for violations never personally experienced. | Must have personally suffered each violation alleged, within the one-year limitations period. |
| $200 "subsequent" penalty | Routinely pled for every pay period after the first. | Only after a prior LWDA or court finding (within five years) that the practice was unlawful, or where the practice was malicious, fraudulent, or oppressive. |
| Reduced penalty tiers | None. | $50 for isolated, short-lived events; $25 for certain wage statement violations; 50% reduction for weekly-pay employers. |
| Derivative penalties | Stacked: one violation could support meal/rest, wage statement, and waiting time penalties. | Derivative wage statement and waiting time penalties generally limited. |
| Penalty caps | Court discretion to reduce "unjust, arbitrary and oppressive, or confiscatory" awards. | 15% cap with all reasonable steps taken before the notice or a request for employment records is received; 30% cap with all reasonable steps taken within 60 days after notice is received. |
| Cure | Unavailable for the core § 2699.5 wage-and-hour violations. | Most core wage-and-hour violations are now curable. Small employers (fewer than 100): cure proposal to the LWDA within 33 days. Large employers: Early Evaluation Conference after suit is filed. All employers: 33-day wage statement cure. Final pay, timely payment, and public works violations (among others) remain non-curable. |
| Distribution | 75% LWDA / 25% employees. | 65% LWDA / 35% employees. |
| Injunctive relief | Not available. | Available. |
| Manageability | Courts could not strike PAGA claims as unmanageable (Estrada, 2024). | Courts may limit evidence and scope so the claim can be effectively tried. |

## 3.1 Standing: each violation, personally suffered

An "aggrieved employee" must now have personally suffered each of the violations alleged during the one-year limitations period. That reverses the *Huff* rule: an employee who suffered one violation can no longer ride it to penalties for a dozen others. A payroll clerk who never worked in the field cannot pursue rest-break penalties for the crews, and a recent hire cannot pursue penalties for a wage statement format the company retired before she started. When a notice arrives, check the named employee's own records first. Many notices still allege categories of violations the named employee could not have suffered.

## 3.2 Reasonable-steps penalty caps

This is the reform that matters most for prevention. If the employer took "all reasonable steps" to comply with the Labor Code before receiving the PAGA notice or a request for employment records from the PAGA plaintiff, penalties may be capped at 15% of the statutory maximum. If the employer takes all reasonable steps within 60 days of receiving the notice, penalties may be capped at 30%. The existence of a violation despite those steps does not, by itself, show the employer failed to take all reasonable steps.

"Reasonable steps" is evaluated on the totality of the circumstances, including the employer's size and resources and the nature, severity, and duration of the violations. The statute lists four examples of reasonable steps:

**Conducted periodic payroll audits and took action in response to the results.**

**Disseminated lawful written policies.**

**Trained supervisors on applicable Labor Code and Wage Order compliance.**

**Took appropriate corrective action with regard to supervisors.**

**Note the theme: policies alone are not enough.** What the reform rewards is a documented, ongoing cycle of audit, fix, train, and enforce. Section 9 walks through what this looks like in practice for a contractor.

## 3.3 Reduced and restricted penalties

- **The $200 rate is no longer automatic.** It now requires a finding by the LWDA or a court, within the prior five years, that the employer's policy or practice was unlawful, or a court determination that the policy or practice was malicious, fraudulent, or oppressive. Otherwise, the $100 rate applies throughout.
- **Isolated events:** $50 per employee per pay period where the violation "resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods."
- **Wage statements (§ 226(a)):** $25 per employee per pay period in specified circumstances, including where the employee could promptly and easily determine the required information from the wage statement alone.
- **Weekly pay:** Penalties are reduced by 50% for employers who pay weekly, so they are not penalized for having twice as many pay periods.
- **Derivative penalties:** Wage statement and waiting time penalties that merely flow from an underlying violation (for example, an unpaid meal premium) generally can no longer be stacked on top of the penalty for the underlying violation.
- **Distribution:** The employees' share rises from 25% to 35%; the LWDA's falls from 75% to 65%.

- **After a cure:** Under § 2699(j), an employer that meets a cap and cures pays no penalty for that violation, an employer that cures a § 226(a) violation pays none, and any other employer that cures pays at most $15 per employee per pay period.

## 3.4 Cure and Early Evaluation

Under the original statute, the core wage-and-hour violations could not be cured. The reforms moved meal and rest period, overtime, minimum wage, wage statement, and expense reimbursement claims (among others) off the list of non-curable violations in Labor Code § 2699.5, and opened two pretrial off-ramps depending on employer size, plus a streamlined cure for wage statement violations available to all employers. Some violations remain non-curable, including final pay and waiting time claims (§§ 201–203), timely payment of wages (§ 204), and, for contractors on public works, prevailing wage, certified payroll, apprenticeship, and public works overtime claims (§§ 1771, 1774, 1776, 1777.5, 1811, and 1815). For those violations, the reasonable-steps caps in Section 3.2 are the primary tool for limiting exposure. These cure procedures became operative on October 1, 2024.

### Small employers (fewer than 100 employees during the period covered by the notice)

Within 33 days of receiving a PAGA notice, a small employer may submit a confidential proposal to the LWDA to cure the alleged violations. A "small employer" is one that employed fewer than 100 employees in total during the period covered by the PAGA notice; because the statute does not specify how headcount is measured over that period, contractors whose workforce fluctuates near 100 should confirm eligibility with counsel before relying on the small-employer cure process. If the LWDA accepts the cure and the employer performs it, no PAGA lawsuit may be filed for those violations. Curing requires making each aggrieved employee whole: all owed wages back three years, plus 7% interest, plus liquidated damages, plus reasonable attorneys' fees and costs.

### Large employers (100 or more employees during the period covered by the notice)

Once suit is filed, a large employer may request an Early Evaluation Conference (“EEC”). Litigation can be stayed while the parties and a neutral evaluator identify the disputed allegations, hear the employer's cure intentions, and either settle or narrow the case. The employer's reasonable steps and cure actions taken during this window may support the 30% penalty cap. Large employers have a statutory right to request an Early Evaluation Conference, and if they also request a stay, the court must grant it unless it finds good cause to deny the request. Small employers have the same right only if they submitted a cure proposal to the LWDA that the agency found insufficient or did not act on; otherwise, they may request early evaluation only on whatever terms the court makes available to other litigants, without a mandatory stay.

## 3.5 Injunctive relief and manageability

Courts may now order injunctive relief in PAGA actions. For contractors, that means a court can order changes to timekeeping systems, meal-break protocols, or PPE reimbursement practices as part of a judgment or settlement. And responding to Estrada, the reforms authorize courts to limit the evidence presented at trial, or otherwise limit the scope of a PAGA claim, so that it can be tried effectively. Defense counsel now has a basis to argue that a sprawling notice should be narrowed before trial.

# 4. Where Contractors Get Hit — The Biggest Exposure Areas

These exposure areas apply to union and non-union crews alike. For CBA-covered employees, a qualifying agreement may change the underlying rule (see the "Check your CBA" label in Section 5) or send the dispute to the grievance procedure instead of a PAGA lawsuit (Section 8), but neither makes a compliance problem go away. Although not every wage-and-hour claim appears equally on construction jobsites, the following list reflects the categories that dominate PAGA notices and class actions filed against California contractors and where the field practices most often diverge from what written policies say.

1. **Meal and rest period compliance.** Long shifts, remote jobsites, and pressure to hit daily production targets combine to make missed, late, short, or interrupted breaks the single most litigated wage-and-hour issue in this state. Wage Order 16 (construction) has some special rules, but the basic 30-minute meal period and 10-minute rest break structure applies to nearly all field work.
2. **Off-the-clock work at the yard, gate, or truck.** Loading tools, filling out daily logs, waiting for keys, watching mandatory safety videos, or driving a company truck from the yard to the jobsite before clocking in are the most common sources of unpaid time in this industry.
3. **Wage statement (Labor Code § 226) defects.** Missing pay period dates, missing employer legal name or address, hourly rates that don't tie to hours worked (especially on multi-rate or prevailing-wage jobs), missing paid-sick-leave balances, missing piece-rate line items. These items are cheap to fix, but expensive to litigate.
4. **Business expense reimbursement (Labor Code § 2802).** Tools, PPE, cell phones, personal vehicles used for work, mileage between jobsites, laundering of required uniforms. This is a top-three exposure area for contractors, and one frequently ignored.
5. **Travel and drive time.** Time the employer requires an employee to spend at the yard, or in company-provided transportation, before reaching the jobsite is almost always compensable, as is time driving between jobsites during a shift. A direct commute from home to the first jobsite generally is not.
6. **Reporting-time pay.** When crews are sent home due to no fault of their own, such as due to missing materials or a customer no-show, the wage orders typically require payment for half the scheduled shift (minimum two hours, maximum four).
7. **Regular rate and overtime premium miscalculations.** Non-discretionary bonuses (attendance, safety, production), shift differentials, and piece-rate earnings must be included in the regular rate before calculating overtime and meal/rest premiums.
8. **Piece-rate compliance.** Labor Code § 226.2 requires piece-rate employers to separately compensate rest breaks and other nonproductive time, at specific hourly rates, with those amounts broken out on the wage statement.
9. **Prevailing wage on public works.** Rate determinations, apprenticeship ratios, certified payrolls, fringe benefit crediting, and travel-and-subsistence rules all create wage-and-hour exposure that can be laundered into PAGA claims.
10. **Final pay.** Layoffs at project end must be paid immediately, on the last day worked. Voluntary quits with less than 72 hours' notice must be paid within 72 hours. Getting this wrong triggers up to 30 days of "waiting time" penalties per employee under § 203.

# 5. The Wage-and-Hour Audit — What to Look For

Every California contractor should run a documented wage-and-hour audit at least once a year. The checklist below reflects both the areas that trigger the most PAGA litigation and the areas most heavily emphasized in the "reasonable steps" analysis. An audit that finds nothing does not exist — every audit will surface issues, and the point is to find and fix them before a former employee's lawyer does.

## How to read this section:

Each subsection is labeled to show how broadly the guidance applies:

- **All employees:** the rule applies regardless of job, wage order, or union status.
- **Depends on the work:** the rule comes from Wage Order 16, which covers on-site construction occupations. Office staff, and possibly employees who work only in a shop or yard, may be covered by a different wage order with different rules.
- **Check your CBA:** a qualifying CBA may modify or replace the rule for the employees it covers, depending on its terms.

Two cautions apply to the "Check your CBA" label. First, the CBA exemptions discussed in this section are separate from the PAGA exemption in Labor Code § 2699.6 (Section 8). These exemptions change what the employer owes; § 2699.6 changes only where a dispute is resolved. Second, each exemption has its own conditions, and a CBA that satisfies one may not satisfy the others. Review each agreement, and the work each employee performs under it, before relying on any of them.

**Which wage order applies**

Wage Order 16 covers employees in on-site occupations in the construction, drilling, logging, and mining industries. For most contractors, that means field employees performing on-site construction work. Office and administrative employees, and possibly employees who work only in a shop, yard, or fabrication facility, may be covered by a different wage order (Wage Order 4 is common for office staff). Many rules are the same across wage orders, but several discussed below are specific to Wage Order 16, including the on-duty meal language in § 10(D), the rest period flexibility in § 11, and the travel and reporting-time rules in § 5. Confirm which wage order applies to each employee group before applying them.

## 5.1 Meal and rest periods

**Applies to:** *Depends on the work · Check your CBA*

The basic rule under Wage Order 16 tracks the general rule: a 30-minute duty-free and uninterrupted meal period must begin before the end of the fifth hour of work; a second 30-minute meal is required when the shift exceeds ten hours (waivable only when the shift is 12 hours or less and the first meal was not waived); a paid 10-minute rest break must be authorized and permitted for every four hours worked or major fraction thereof. During a meal period, the employee must be relieved of all duty and free to leave the worksite. During a rest period, the employee must be relieved of all duty and free from employer control (*Augustus v. ABM Security Services, Inc.*, 2016).

**Gated and remote jobsites.** In *Huerta v. CSI Electrical Contractors* (2024), the California Supreme Court applied Wage Order 16 to an electrical contractor's work on a gated solar project, addressing whether workers must be paid for time spent in security screening, time spent driving on the employer's property between the gate and the parking area, and meal periods during which workers were not permitted to leave

the site. Contractors that keep workers on a jobsite during lunch should assume that restriction affects both whether the meal period is compliant and whether the time must be paid.

**On-duty meal periods**

A meal period during which the employee is not relieved of all duty is an "on duty" meal period and counts as time worked. Wage Order 16 § 10(D) permits one only when (1) the nature of the work prevents the employee from being relieved of all duty, and (2) the employer and employee agree in writing to a paid, on-the-job meal period that complies with Labor Code § 512. This is not a construction-specific exception. Nearly every other wage order contains the same two conditions (see, e.g., Wage Order 5 § 11(A)).

The "nature of the work" condition is narrow. The Labor Commissioner weighs the type of work, whether other employees are available to relieve the worker, the consequences to the employer if the worker is relieved, whether the employer could have anticipated the problem and scheduled around it, and whether the work product or process would be damaged or destroyed by the break (DLSE Opinion Letter 2009.06.09). A crew that could have been relieved in rotation, or a job that could have been scheduled around lunch, does not qualify. On-duty meals are the exception, not the workaround, and a contractor that treats every meal as on-duty is asking for a class action.

**Timing flexibility under Wage Order 16: rest periods, not meal periods**

Wage Order 16 gives construction employers more scheduling flexibility than most wage orders, but that flexibility applies to rest periods. There is no comparable timing exception for meal periods.

**Rest periods.** Rest periods should fall in the middle of each work period "insofar as practicable." Section 11(A) expressly allows an employer to stagger rest periods to avoid interrupting the flow of work and to maintain continuous operations, or to schedule them to coincide with natural breaks in the work, such as while the crew waits on an inspection, a delivery, or another trade. Section 11(B) goes further. In limited circumstances, when disrupting continuous operations would jeopardize the product or process of the work (a concrete pour is the classic example), a rest period need not be authorized at all. When that happens, the employer must either make up the missed rest period later in the same workday or pay the employee for the missed ten minutes at the regular rate of pay within the same pay period.

Two cautions apply. First, "limited circumstances" means what it says. The exception covers a continuous operation that would be damaged by a break, not a busy day or a job that is behind schedule. There is little case law applying § 11(B), and plaintiffs will argue for a narrow reading. Second, the exception only holds up with a paper trail. Each use should be recorded with the date, the crew, the operation, and whether the break was made up or paid, and the ten-minute payment should be identifiable on the wage statement.

**Meal periods.** Nothing in Wage Order 16 relaxes meal period timing because of the nature of the work. The first meal period must begin before the end of the fifth hour of work, and the second before the end of the tenth, regardless of what is happening on the job. The only work-driven alternatives are the on-duty meal period described above, which requires both the nature-of-the-work showing and a written agreement, and the collective bargaining exemption described below. A foreman who pushes lunch past the fifth hour to finish a project has created a late meal period, and one hour of premium pay is owed.

**CBA-covered employees**

Wage Order 16 § 10(E) and Labor Code § 512(e) and (f) exempt construction employees covered by a qualifying collective bargaining agreement from the meal period requirements. The statute asks for more than the wage order does: in addition to covering wages, hours, and working conditions, providing premium overtime rates, and setting a regular hourly rate at least 30% above the state minimum wage, the CBA must expressly provide for meal periods and for final and binding arbitration of disputes over its meal period

provisions. Separately, Wage Order 16 § 11(E) exempts CBA-covered employees from the rest period rules if the CBA provides equivalent protection. When an exemption applies, the CBA's meal and rest provisions govern and must be followed. Employees the CBA does not cover, and CBA-covered employees whose agreement does not meet these conditions, remain subject to the rules above.

### What to check

- ✓ Time records show meal periods actually taken, with clock-out and clock-back-in entries rather than a lunch code assumed by the payroll system.
- ✓ No rounding of meal period punches (*Donohue v. AMN Services, LLC*, 2021). Under *Donohue*, time records showing a missed, late, or short meal period create a rebuttable presumption of a violation, so the employer must be able to show that a compliant meal period was provided, and the employee chose not to take it, or that a premium was paid.
- ✓ The first meal period begins by the end of the fifth hour on every applicable shift. Look for 6:00 starts with lunch after 11:00, 6:30 starts with lunch after 11:30, and 7:00 starts with lunch after 12:00. Those are the patterns most often found on audit.
- ✓ Second meal periods are taken on shifts over ten hours, or a valid written waiver exists.
- ✓ Rest periods are affirmatively authorized, not merely permitted "if you have time." Enforcement means supervisor conduct on the jobsite, not policy in the handbook.
- ✓ Any on-duty meal period is supported by a signed written agreement (with a revocation right) and a documented reason the nature of the work prevented relief.
- ✓ Any use of the § 11(B) continuous-operations exception is logged, and each missed rest period is either made up the same day or paid (ten minutes at the regular rate) in the same pay period.
- ✓ A written system exists for employees to report missed, late, short, or interrupted meal and rest periods, with the reason coded.
- ✓ One additional hour of pay is paid on the next paycheck when a meal or rest period is not fully compliant. Premiums are capped at two per day (one for meal periods, one for rest periods), and each type of violation triggers its own premium.
- ✓ Premiums are paid at the "regular rate of compensation," including non-discretionary bonuses, not just the employee's base hourly rate (*Ferra v. Loews Hollywood Hotel, LLC*, 2021).
- ✓ For CBA-covered crews, the CBA's meal and rest provisions are being followed, and counsel has confirmed whether the agreement actually satisfies § 512(e) and § 11(E).

**Contractor-specific trap**

Foremen who tell the crew "we'll take lunch when we get to a stopping point" and then run past the end of the fifth hour to finish a pour, a wire pull, or a service tie-in. On a 7:00 start, a 12:15 lunch is late. Every one of those days is a premium-pay day. And because unpaid premiums are wages (*Naranjo v. Spectrum Security Services*, 2022), an unpaid premium can also support wage statement and final-pay penalty claims in a class action, even though the 2024 reforms limit derivative penalties under PAGA.

## 5.2 Timekeeping and off-the-clock work

**Applies to:** *All employees*

The employer bears the burden of maintaining accurate records of all hours worked. When those records are missing or unreliable, courts generally accept the employee's reasonable estimate — and in a class or PAGA

context, one employee's estimate can be extrapolated across the workforce. A CBA does not change these obligations.

### What to check

- ✓ Employees track time to the exact minute, in and out (start of shift, meal start, meal end, end of shift), on every shift, contemporaneously — not filled in the next morning from memory.
- ✓ No rounding. Time rounding was legal in California for decades, but recent case law prohibits rounding meal period punches (*Donohue, 2021*), and a Court of Appeal held that an employer that can capture exact time must pay for all of it *(Camp v. Home Depot, 2022;* review granted by the California Supreme Court). Until *Camp* is decided, the safest practice is to pay to the minute. If your system has the data, use the data.
- ✓ Employees sign or electronically acknowledge the accuracy of each time record.
- ✓ Off-the-clock work is expressly prohibited in writing and, much more importantly, supervisors enforce that prohibition. Common off-the-clock traps for contractors: pre-shift vehicle cleaning, loading tools/equipment, mandatory tailgate meetings before clock-in, post-shift washup and equipment return, driving the company truck home with tools that have to be secured on arrival.
- ✓ If any non-exempt employee works from home, they clock in and out on the same system.
- ✓ Timekeeping-system corrections are logged with who made the change, when, and why, and the employee acknowledges/authorizes the change.

## 5.3 Wage statements (Labor Code § 226)

**Applies to:** *All employees · Check your CBA (paid sick leave balance only)*

Section 226(a) requires nine items on every itemized wage statement, for every employee, union or not:

1. Gross wages earned.
2. Total hours worked (except for exempt salaried employees).
3. Number of piece-rate units earned and the applicable piece rate, if paid on a piece-rate basis.
4. All deductions.
5. Net wages earned.
6. The inclusive dates of the period for which the employee is paid.
7. The name of the employee and the last four digits of the SSN or an employee identification number.
8. The name and address of the legal entity that is the employer.
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Labor Code § 246(i) requires available paid sick leave (or paid time off used for sick leave) to be shown on the wage statement or on a separate writing issued with the paycheck. Construction employees covered by a qualifying CBA may be excluded from California's paid sick leave law (Labor Code § 245.5), which affects whether a balance must appear for them. Check the CBA before removing it.

The most common defects on contractor wage statements: missing employer legal name (a "dba" is not enough), missing employer address, hours-at-rate lines that don't sum to total hours (particularly on multi-rate prevailing-wage projects), missing piece-rate breakout, missing sick leave balance, and pay-period

beginning and ending dates that appear only on the pay-stub cover email rather than on the statement itself, or paystubs that show only the pay period end date.

**Post-2024 sizing**

Where the reduced $25 rate applies, a defective wage statement format used for a year across 100 employees paid biweekly comes to $25 × 26 pay periods × 100 employees = $65,000, compared with $510,000, at the pre-reform default rates (and potentially much more where plaintiffs relied on the $250 and $1,000 penalties in § 226.3). Cheaper than before, but still worth an afternoon with your payroll provider.

## 5.4 Business expense reimbursement (Labor Code § 2802)

**Applies to:** *All employees*

Every "necessary expenditure or loss incurred by the employee in direct consequence of the discharge of his or her duties" must be reimbursed. For contractors, that captures:

- ✓ **Tools and equipment.** Employees earning less than twice minimum wage cannot be required to provide their own tools (Wage Order 16 § 8). Employees earning at least twice minimum wage may be required to provide hand tools customarily required by the trade or craft. The DLSE reads "hand tools" narrowly, so power tools and specialty equipment should be treated as the employer's responsibility.
- ✓ **Personal protective equipment.** PPE required by Cal/OSHA or by the employer is a business expense of the employer, not the employee. That includes hard hats, safety glasses, gloves, hearing protection, high-visibility clothing, fall-protection harnesses, and arc-rated clothing where the hazard analysis requires it.
- ✓ **Cell phones.** Under *Cochran v. Schwan's Home Service* (2014), an employer must reimburse a “reasonable percentage” of the employee's cell phone bill when the employee is required or reasonably expected to use a personal phone for work, even if the employee is on an unlimited plan and even if the employee incurred no additional cost. Many employers use a flat monthly stipend (for example, $25–$50), but the amount should reasonably reflect the employee's actual work use.
- ✓ **Personal vehicles.** When an employee is required to use a personal vehicle for work — driving between jobsites, picking up parts, running materials — mileage must be reimbursed. The IRS standard rate is a common method but not the only reasonable method; a company can reimburse actual costs or an approved lump-sum method so long as it fully indemnifies the employee.
- ✓ **Uniforms and required clothing.** If the employer requires distinctive clothing, the employer bears the cost of purchase and maintenance. "Distinctive" is more than a plain t-shirt but logo shirts required to be worn on the jobsite generally qualify.
- ✓ **Home internet and workspace.** For office employees required to work from home, a reasonable share of internet and, in some cases, a workspace stipend.

A written reimbursement policy that identifies these categories, a simple submission process, a regular reimbursement cycle, and periodic audits of what was actually reimbursed support two of the four reasonable-steps factors (written policies and payroll audits). Training supervisors not to discourage submissions supports a third.

## 5.5 Travel time and drive time

**Applies to:** *Depends on the work · Check your CBA*

The California Supreme Court's decision in *Morillion v. Royal Packing Co.* (2000) governs: time spent traveling from an employer-designated meeting place to a jobsite, in employer-required transportation, is compensable "hours worked." So is time an employee is required to spend at the yard loading tools, receiving assignments, or waiting for the crew before departing for the jobsite.

The ordinary commute from home to the first jobsite is not compensable. It can become compensable when the employer requires the employee to report first to the yard, requires the employee to ride employer-provided transportation, or otherwise controls the employee during the trip. Carrying company tools in a take-home vehicle does not by itself make a commute compensable where participation in the take-home program is voluntary (*Hernandez v. Pacific Bell Telephone Co.*, 2018), but the analysis changes if the employer requires it or assigns duties during the drive. Commuting in an employer-provided vehicle used for ridesharing is generally excluded from hours worked under Labor Code § 510(b). Travel on the employer's own property, such as from a security gate to a parking area, was also at issue in *Huerta* (see Section 5.1).

### What to check

- ✓ Whether crews are required, in policy or in practice, to report to the yard before proceeding to the jobsite.
- ✓ Whether foremen or leads are required to pick up other crew members on the way to the jobsite.
- ✓ Whether employees drive company trucks home overnight, whether the program is voluntary, and whether they are required to secure tools or perform any other duty on arrival.
- ✓ Whether time between jobsites within a shift is compensated (it must be).
- ✓ Whether compensable travel time is paid at the right rate. Wage Order 16 § 5(A) requires all employer-mandated travel after the first location where the employee's presence is required to be paid at the employee's regular rate of pay (or at the overtime rate if the travel time pushes the employee into overtime). For most contractors, that covers the drive from the yard to the jobsite (when the yard is the first required stop) and all travel between jobsites during the day.

**CBA-covered employees and public works.** Wage Order 16 § 5 applies to employees covered by a CBA unless the agreement expressly provides otherwise (§ 5(D)). Check whether your agreement has its own travel provisions. On public works, also check the prevailing wage determination for travel and subsistence requirements, which apply to union and non-union crews alike.

## 5.6 Reporting-time pay

**Applies to:** *Depends on the work · Check your CBA*

Wage Order 16 § 5 requires that when an employee reports to work as scheduled and is not put to work, or is furnished less than half the scheduled day's work, the employee must be paid for half the usual or scheduled day's work — but in no event less than two hours nor more than four.

Under § 5(C), reporting-time pay is not owed when (1) operations cannot begin or continue because of threats to employees or property, or when civil authorities recommend it; (2) public utilities fail to supply electricity, water, or gas, or the public utilities or sewer system fail; or (3) the interruption of work is caused by an Act of God or other cause not within the employer's control.

For contractors, the third exception matters most. Weather that makes work unsafe or impossible will often fall within it, although whether a particular cancellation qualifies depends on the facts, and there is little guidance on how broadly "other cause not within the employer's control" will be read. A late material delivery or a failed inspection may or may not qualify, depending on whether the contractor could have prevented or anticipated it. A customer cancellation is a harder argument. Document the reason for every send-home, and when the call is close, pay.

Other wage orders have different reporting-time rules, including a separate rule for employees required to report a second time in the same day. Office and shop employees covered by another wage order may be treated differently.

**Avoiding the obligation.** Reporting-time pay is triggered when the employee reports. The most effective practice is to make the weather and materials call early and notify the crew before they leave for work. Be careful with systems that require employees to call in or check a message to learn whether they are working. Under a similar wage order provision, the Court of Appeal held that a call-in requirement can itself count as "reporting" (*Ward v. Tilly's, Inc.*, 2019).

**CBA-covered employees.** Wage Order 16 § 5 applies to CBA-covered employees unless the agreement expressly provides otherwise (§ 5(D)). Many construction agreements contain their own show-up pay provisions; check which rule governs each crew.

## 5.7 Regular rate and overtime premiums

**Applies to:** *All employees · Check your CBA (overtime)*

The "regular rate" is not the base hourly rate. It is the total remuneration for employment (excluding statutory exclusions) divided by the total hours worked. In practice, every non-discretionary bonus, shift differential, piece-rate earning, commission, and non-cash payment must be folded into the regular rate for that pay period and then used to calculate:

- ✓ Overtime premium (1.5x the regular rate over 8 hours in a workday, over 40 in a workweek, and for the first 8 hours on the seventh consecutive workday).
- ✓ Double time (2x the regular rate over 12 hours in a workday and over 8 hours on the seventh consecutive workday).
- ✓ Meal and rest period premiums (Ferra v. Loews Hollywood Hotel, 2021 — regular rate, not base rate).
- ✓ Sick leave pay for non-exempt employees (using either the 90-day lookback/average regular rate or the regular rate for the workweek in which the sick leave is taken).

The two calculation traps that generate the most litigation:

1. **Flat-sum bonuses (Alvarado v. Dart Container Corp., 2018):** a flat-sum bonus like a $200 monthly attendance bonus must be divided by the non-overtime hours actually worked in the bonus period — not total hours, not scheduled hours. This yields a higher per-hour bonus contribution and a higher regular rate for overtime purposes than the federal formula.
2. **Retroactive bonuses:** a quarterly or annual production bonus retroactively increases the regular rate for every overtime hour worked during the bonus period, requiring a "true-up" overtime payment. The payroll system must be configured to do this automatically or the audit must catch it manually.

**CBA-covered employees.** Labor Code § 514 exempts employees covered by a qualifying CBA from California's daily and weekly overtime requirements (§ 510) if the agreement expressly provides for wages, hours, and working conditions, premium wage rates for all overtime hours, and a regular hourly rate at least 30% above

the state minimum wage. The CBA's overtime terms then govern and must be followed. Employees the agreement does not cover remain subject to § 510, and meal and rest premiums must still be paid at the regular rate of compensation.

## 5.8 Piece-rate compliance (Labor Code § 226.2)

**Applies to:** *All employees paid on a piece-rate or production basis*

Contractors that pay employees on a piece-rate or production basis (per fixture, per unit, per foot, per weld, per install) must comply with § 226.2:

- ✓ Rest and recovery periods must be separately compensated at an hourly rate equal to or greater than the higher of (a) the average hourly rate determined by dividing the total compensation for the workweek by total hours worked, exclusive of rest/recovery time, or (b) the applicable minimum wage.
- ✓ "Other nonproductive time" — time under the employer's control that is not directly related to the activity being compensated on a piece-rate basis — must be separately compensated at the applicable minimum wage or above.
- ✓ The wage statement must separately state the total hours of compensable rest/recovery periods, the rate paid, and the gross wages for that time; and separately, the total hours of other nonproductive time, the rate paid, and the gross wages for that time.

A pure piece-rate structure with none of these breakouts is unlawful on its face — a fact that plaintiffs' counsel routinely confirm by requesting sample wage statements under § 226(b), often before or alongside the LWDA notice.

## 5.9 Prevailing wage on public works

**Applies to:** *Depends on the project (all workers on covered public works, union or non-union)*

Public works projects (Labor Code § 1720 et seq.) layer prevailing wage requirements on top of everything above. A single misclassified worker, missed apprenticeship ratio, unpaid fringe, or defective certified payroll can convert a public works dispute into a PAGA claim.

## What to check

- ✓ Correct prevailing wage determinations pulled from the DIR website for the applicable craft, sub craft, and county, for every classification on the job.
- ✓ Apprentice-to-journeyman ratios met, with timely DAS-140 and DAS-142 filings up to date.
- ✓ Fringe benefits credited against prevailing wage only to the extent actually paid to a bona fide plan.
- ✓ Training contributions paid to the applicable JATC.
- ✓ Certified payroll (form A-1-131) submitted electronically to the DIR, accurate, and reconciled monthly to the underlying time records.
- ✓ Travel and subsistence rules applied where the master labor agreement or applicable determination requires them.
- ✓ Wage statement rates and hours reconcile to the certified payroll. Discrepancies here are usually the first thing plaintiffs' counsel finds.

## 5.10 Recordkeeping

**Applies to:** *All employees*

California requires employers to keep, for at least three years, accurate records of all hours worked, wages paid, meal periods, split shifts, and total wages for each pay period. Payroll audits should confirm not only that records exist, but that they are complete, legible, and organized so they can be produced in a defensible format on 30 days' notice.

- ✓ Time records: four years is best practice given the statute of limitations for unfair competition claims.
- ✓ Wage statements: four years, and note that employees have a statutory right under § 226(b) to inspect or copy their own records on 21 days' written or oral request.
- ✓ Meal period records, on-duty meal agreements, and premium pay records: four years.
- ✓ Personnel files: the employee has a statutory right of access under § 1198.5; retain for four years after termination.
- ✓ I-9s: three years after date of hire or one year after termination, whichever is later.

## 5.11 Final pay (§§ 201–203)

**Applies to:** *All employees · Check your CBA (vacation payout)*

- ✓ **Involuntary termination or layoff:** all wages due immediately, on the last day of work. For construction contractors, this includes layoffs at the end of a project or the completion of a phase.
- ✓ **Voluntary quit with 72 hours' notice or more:** all wages due on the last day of work.
- ✓ **Voluntary quit with less than 72 hours' notice:** all wages due within 72 hours of the quit.
- ✓ **Waiting time penalty:** if the failure is willful, the employee's daily rate continues to accrue for up to 30 calendar days (including weekends and holidays) after the wages come due. "Willful" is a low bar — it means intentional, not necessarily malicious.

The most common trap: final wages include accrued but unused vacation, PTO, and any earned commissions or bonuses. They also include any premium pay owed for meal/rest violations up through the last day.

**CBA-covered employees.** Labor Code § 227.3, which requires vested vacation to be paid out at termination, applies "unless otherwise provided by a collective-bargaining agreement." Some CBAs route vacation pay through a trust fund, which changes what is due on the last day. Check your agreement.

# 6. Policies vs. What Happens in the Field

Every audit and every deposition in wage-and-hour litigation eventually gets to the same fact pattern: the written policy said one thing; the foreman on the jobsite did another; the company did not know or did not enforce. That gap — between the handbook and the field — is where reasonable-steps arguments live or die.

The 2024 reforms specifically list "took appropriate corrective action with regard to supervisors" as a reasonable-steps factor. That language is a directive. It means:

1. The training the company provides on meal periods, rest breaks, off-the-clock work, timekeeping, and reimbursement is delivered to supervisors first and most rigorously. A foreman who does not understand what a compliant meal period looks like could create dozens of violations a week.
2. Compliance is a written and measured component of every supervisor's job description, performance review, and — where warranted — bonus structure. Safety compliance is treated this way in most well-run construction companies. Wage and hour compliance should be treated the same way.
3. Real corrective action is taken when a supervisor is out of compliance. That means documented coaching, then written warning, then discipline, on the same escalation ladder used for safety violations. The absence of any supervisor discipline records is, in litigation, treated as evidence that the policy was a paper policy.
4. Anonymous or protected reporting channels exist and are used. If crew members cannot raise a break or clock-in issue without fear that the foreman will retaliate, the company will never learn about the problem until it reads about it in a PAGA notice.

## One helpful audit question

Ask ten randomly selected field employees, one at a time, in a private setting:



**“How does lunch work on your jobs?"**

**“Who reminds you?"**

**“What do you do if you can’t take it?"**

**“Have you ever missed one and been paid an extra hour of pay for it?”**

**If the answers don’t match the handbook, the handbook is not the operative policy. The supervisor is.**

That is the “totality of the circumstances” a court will examine.

# 7. When You Receive a PAGA Notice — Your First 60 Days

A PAGA notice is a letter filed with the LWDA and served on the employer, identifying the aggrieved employee, the alleged Labor Code violations, and the facts and theories supporting them. Several deadlines start running immediately, and they run at the same time, not one after another. Some are counted from the postmark date of the notice and others from the date the employer receives it.

## Key deadlines at a glance

| Deadline | Counted from | Who | What |
|---|---|---|---|
| **33 days** | Postmark of the notice | All employers | Complete any wage statement cure and give notice of the cure. |
| **33 days** | Receipt of the notice | Employers with fewer than 100 employees | Submit a confidential cure proposal to the LWDA. |
| **60 days** | Receipt of the notice | All employers | Take all reasonable steps to prospectively comply (supports the 30% penalty cap). |
| **65 days** | Postmark of the notice | The employee | Earliest date the employee may file suit, unless the LWDA is investigating or a small-employer cure process is pending. |
| **With or before the first appearance** | Service of the complaint | Employers with 100 or more employees | Request an Early Evaluation Conference and a stay of the lawsuit. |

## When to immediately involve counsel

Some events on a jobsite or in a payroll cycle should trigger a call to employment counsel before the day ends. Among them:

- ✓ A PAGA, LWDA, Labor Commissioner, or DIR notice or subpoena arrives.
- ✓ A current or former employee, or their attorney, requests personnel, time, or payroll records under Labor Code § 226, 432, or 1198.5. A records request can close the window for the 15% penalty cap before any PAGA notice is filed.
- ✓ A former employee's attorney sends a demand letter alleging unpaid wages, missed breaks, or wage statement violations.
- ✓ A crew or a group of employees raises a collective complaint about pay, breaks, or hours.
- ✓ A supervisor is accused of retaliation for a wage-related complaint.
- ✓ A payroll error is discovered that affects more than one employee or more than one pay period — before deciding how to correct and communicate.
- ✓ A layoff or reduction in force is planned — to sequence final pay, notice, and severance correctly.
- ✓ A public works audit or a labor compliance monitoring finding is issued.
- ✓ A PAGA complaint is served.

## Day 0: the day the notice arrives

- ✓ Get the notice to counsel the same day. Contact your local NECA chapter for help and resources. Every day the notice sits on someone's desk is a day of the reasonable-steps or cure window burning down.
- ✓ Do not respond to the plaintiff's attorney. Do not call the aggrieved employee. Let counsel handle all contact with the employee's attorney. Do not discipline, terminate, or change the schedule or assignments of anyone named in the notice without first consulting with counsel. Retaliation claims are easy to add and hard to defend.
- ✓ Preserve documents. A litigation hold notice should go out within days to payroll, HR, IT, and every foreman with responsibility for the aggrieved employee's crew. See ‘What documents and records to preserve’ below.
- ✓ Record both the postmark date on the envelope and the date the notice was received. The wage statement cure and the earliest suit date run from the postmark, and the small-employer cure and the 60-day window run from receipt.
- ✓ Notify your EPLI carrier if you have one. PAGA is typically excluded from coverage, but employment practices liability policies vary and any notice deadlines under the policy must be met.

## First Two Weeks: triage (all employers)

- ✓ Preserve and collect the underlying wage and hour records for the aggrieved employee and for the alleged aggrieved employee group.
- ✓ Work with counsel to assess whether the plaintiff has standing under the 2024 reforms — did the aggrieved employee actually experience each type of violation alleged? Many recent notices fail this test on the first review.
- ✓ Work with counsel to sort the affected employees into groups: CBA-covered field employees, non-covered field employees, and office or management staff. For each CBA-covered group, pull the full agreement (including any master labor agreement, local addenda, and project labor agreement) and answer two separate questions: whether the CBA satisfies Labor Code § 2699.6, which would take that group out of PAGA, and whether a Wage Order 16 or Labor Code CBA exemption defeats any of the underlying claims (see Section 8).
- ✓ Work with counsel to start scoping the "cure" analysis: which alleged violations, if any, could be cured; what it would cost to make each aggrieved employee whole; and what reasonable steps have already been taken.
- ✓ Choose which cure route, if any, the employer will use, as both 33-day deadlines are close.

## By Day 33 (cure deadlines)

## All employers: wage statement cure

- ✓ Any employer, regardless of size, may cure an alleged § 226 wage statement violation within 33 calendar days of the notice's postmark date, when that is the only violation it seeks to cure through this procedure. This option is separate from, and faster than, the small-employer cure process.
- ✓ The cure requires corrected information for each affected employee for each affected pay period, going back three years. For a missing or incorrect employer name and address, a written notice of the correct information is enough. Fixing the format going forward is not enough.

- ✓ The employer must give written notice of the cure by certified mail to the employee and by online filing with the LWDA. A timely cure bars a PAGA lawsuit on that violation and eliminates the penalty for it. The employee may dispute the cure through the LWDA.

## Employers with fewer than 100 employees: cure proposal to LWDA

- ✓ An employer with fewer than 100 total employees may submit a cure proposal to the LWDA within 33 days of receiving the notice, identifying which alleged violations it will cure. Contractors whose workforce fluctuates near 100 should confirm eligibility with counsel before relying on the small-employer cure process.
- ✓ The cure must correct the violation going forward and make each aggrieved employee whole for the prior violations — with three years of owed wages, 7% interest, liquidated damages where applicable, and reasonable attorneys' fees and costs.
- ✓ If the LWDA accepts and the employer performs the cure, no PAGA lawsuit may be filed for those violations. This is a powerful tool but a narrow one: only the specific violations cured are foreclosed.

Cure procedures can be used only once in a 12-month period for violations of the same provisions, so counsel should evaluate this option as soon as the notice arrives.

## By Day 60: reasonable steps (all employers)

- ✓ For every alleged violation, ask: what would "all reasonable steps" have looked like before the notice? What can we do in the next 60 days to satisfy the standard now?
- ✓ Penalties may be capped at 30% of the statutory maximum if the employer takes all reasonable steps within 60 days after the notice, or at 15% if it took them before the notice or a records request. Whether the steps were "reasonable" is decided on the totality of the circumstances, including the employer's size and resources and the nature, severity, and duration of the violations. No checklist guarantees a particular result, the caps do not apply where the court awards the $200 penalty for malicious, fraudulent, or oppressive conduct or a prior finding, and a court retains discretion to depart from the caps in unusual cases. Prompt, documented action still gives the employer its strongest position.
- ✓ This is the window in which to conduct or complete the payroll audit, update and re-issue policies, deliver supervisor training, and document the corrective actions taken with any supervisor whose conduct contributed to the alleged violations; the statute counts “taking an action to initiate” an audit of alleged violations, updated written policies, supervisor training, or corrective action with supervisors. Starting on Day 1 matters more than finishing by Day 60.
- ✓ Every one of those actions should be documented in writing, dated, and preserved. A cap argument at trial or in mediation depends on the paper trail existing.

## Day 65: earliest date suit can be filed

Unless the LWDA notifies the parties that it will investigate, or a small-employer cure process is still pending, the employee may file a PAGA lawsuit 65 days after the notice's postmark date. Plaintiffs' attorneys often file on or shortly after that date, so any cure or reasonable-steps work should be well underway by then.

## When complaint is served: Early Evaluation Conference (large employers)

- ✓ An employer with 100 or more employees may, within statutory deadlines, request an Early Evaluation Conference. The court can stay litigation while a neutral evaluator hears both sides and explores cure

and settlement. The request must be filed with or before the employer's responsive pleading or other first appearance in the case. An employer that answers first loses the right to request it, so calendar the deadline the day the complaint is served. Small employers may also request an EEC from the court.

- ✓ The request must state whether the employer intends to cure any of the alleged violations, identify the violations it will cure, and identify the allegations it disputes.
- ✓ Absent good cause, the court must stay the case and set a mandatory conference within 70 days. The employer submits its cure plan to the neutral evaluator within 21 days of the order, and the plaintiff responds with the factual basis for each claim, the penalties and fees claimed, and any settlement demand. If the evaluator accepts the cure plan, the employer has 10 days (or longer if agreed) to show the cure is complete.
- ✓ This is not an ordinary settlement conference. The process is confidential and in calculating penalties for violations the employer promptly cured, the court must consider the penalty reductions and caps and the fact that the violations were cured without extended litigation.

### What documents and records to preserve at a minimum:

- ✓ Time records for the aggrieved employee and the alleged aggrieved employee group, going back four years AND Payroll records, wage statements, and paystubs for the same period.
- ✓ Meal period records, break tracking sheets, on-duty meal agreements, and premium pay records.
- ✓ Written policies in effect during the PAGA period, and all superseded versions, with dates of adoption and distribution.
- ✓ Training records for supervisors and employees: attendance sheets, training content, dates, and any signed acknowledgments.
- ✓ Prior payroll audits, whether internal or by outside counsel, and any corrective actions taken.
- ✓ Employee handbook acknowledgment forms.
- ✓ Emails, texts, and messaging-app communications among supervisors, HR, and payroll relating to meal periods, break compliance, off-the-clock work, timekeeping corrections, and any complaints raised by employees, especially the named plaintiff.
- ✓ For each foreman or supervisor involved: personnel file, disciplinary record, performance reviews.
- ✓ For public works projects: certified payroll, apprenticeship records, DIR filings.
- ✓ Every CBA covering the affected employees, including master labor agreements, local addenda, project labor agreements, and grievance records.
- ✓ Any records request the employer received under Labor Code § 226, 432, or 1198.5, and the employer's response.

# 8. The Construction / CBA Exemption

Labor Code § 2699.6 exempts certain construction-industry employees from PAGA where their work is covered by a qualifying collective bargaining agreement. This is one of the most valuable tools in the construction employer's compliance kit — but the requirements are specific, and the waiver language alone is not enough. The exemption is currently in effect through January 1, 2038 (extended by AB 1034, 2024). Because the exemption turns on both the terms of the CBA and the work each employee actually performs, contractors should review the applicable CBA, along with which employees and what work it covers, ideally with counsel, before relying on the exemption as a defense to a PAGA claim.

## 8.1 What the exemption covers

The exemption applies to an employee (a) in the construction industry, (b) performing work covered by a valid collective bargaining agreement in effect any time before January 1, 2038, that (c) meets all of the following:

1. Provides for the wages, hours of work, and working conditions of employees.
2. Provides premium wage rates for all overtime hours worked.
3. Provides for a regular hourly pay rate of not less than 30 percent more than the state minimum wage.
4. Prohibits all of the violations of the Labor Code that would be redressable under PAGA, and provides for a grievance and binding arbitration procedure to redress those violations.
5. Expressly waives the requirements of PAGA in clear and unambiguous terms.
6. Authorizes the arbitrator to award any and all remedies otherwise available under the Labor Code, (except that the arbitrator cannot award PAGA civil penalties allocable to the state).

When all six conditions are met, disputes must proceed through the CBA's grievance and arbitration procedure. PAGA does not apply.

## 8.2 What the exemption does not cover

- ✓ Office, administrative, and management employees who are not covered by the CBA. PAGA still applies to them in full.
- ✓ Field employees performing work not covered by the CBA — a mixed workforce where some crews are union and some are non-union does not get a blanket exemption; the exemption is job-by-job and person-by-person.
- ✓ Alleged violations of Labor Code provisions when the CBA does not expressly prohibit them and/or does not provide a grievance and binding arbitration procedure.
- ✓ Public works projects where a project labor agreement does not itself contain all six required elements. A PLA is not automatically a qualifying CBA for § 2699.6 purposes.

## 8.3 Why the waiver language matters

It is tempting to think of the § 2699.6 requirements as a drafting exercise: insert the right waiver, and the PAGA problem is solved. But each of the six elements is a separate requirement, and an employer relying on the exemption should expect a plaintiff to challenge any element that is missing or ambiguous.

- ✓ The waiver must be express and unambiguous. A general grievance-arbitration clause is not enough. A waiver of "any and all claims" is not a waiver of PAGA. The word PAGA (or "Private Attorneys General Act") should appear in the waiver.
- ✓ The prohibition of Labor Code violations must actually be there. A CBA that says the employer will "comply with applicable law" does not "prohibit the violations of the Labor Code" the way the statute requires.
- ✓ The wage floor is a floor, not a target. It must be at least 30% above the state minimum wage — which, at $16.90 per hour effective January 1, 2026, requires a regular hourly rate of not less than $21.97 for all employees to be covered. On January 1, 2027*, minimum wage increases to $17.40, making the 2027 hourly rate $22.62.
  *As the minimum wage will generally increase annually on January 1, remember to check the current rates when evaluating a CBA.
- ✓ The arbitration procedure must be one the employer will actually use. Waiver arguments in litigation frequently fail where the employer never invoked, or actively resisted, the CBA's grievance process.

Any contractor negotiating or renewing a CBA should have counsel review the PAGA-related language specifically, and any contractor relying on an existing CBA for exemption purposes should confirm, in writing, before the next PAGA notice arrives, that every one of the six elements is currently satisfied.

## 8.4 The PAGA exemption is not the same as the Wage Order 16 CBA provisions

Contractors often assume that a CBA that satisfies one union exemption satisfies all of them. It may not. Wage Order 16 and the Labor Code contain several separate CBA provisions, each tied to a specific requirement and each with its own conditions. Labor Code § 2699.6 is different in kind from all of them.

| Provision | What it affects | What the CBA must do to qualify |
|---|---|---|
| Wage Order 16 § 10(E); Labor Code § 512(e)–(f) | Meal periods | Cover wages, hours, and working conditions; provide premium wage rates for all overtime hours; and provide a regular hourly rate at least 30% above the state minimum wage. The statute also requires the CBA to expressly provide for meal periods and for final and binding arbitration of disputes over its meal period provisions. |
| Wage Order 16 § 11(E) | Rest periods | Provide "equivalent protection" to the rest period rules in § 11. |
| Wage Order 16 § 5(D) | Employer-mandated travel and reporting-time pay | Section 5 applies to CBA-covered employees unless the CBA "expressly provides otherwise." |
| Labor Code § 514 | Daily and weekly overtime (§ 510) | Expressly provide for wages, hours, and working conditions; provide premium wage rates for all overtime hours; and provide a regular hourly rate at least 30% above the state minimum wage. |

| Provision | What it affects | What the CBA must do to qualify |
|---|---|---|
| Labor Code § 245.5 | Paid sick leave | Expressly provide for wages, hours of work, and working conditions; provide premium wage rates for all overtime hours worked and a regular hourly rate at least 30% above the state minimum wage; and either (a) have been entered into before January 1, 2015, or (b) expressly waive the requirements of California's paid sick leave law in clear and unambiguous terms. |
| Labor Code § 227.3 | Vacation payout at termination | Provide otherwise (for example, by routing vacation pay through a trust fund). |
| Labor Code § 2699.6 | PAGA (where disputes are resolved, not what is owed) | Satisfy all six elements in Section 8.1: cover wages, hours, and working conditions; provide premium overtime and a regular hourly rate at least 30% above the state minimum wage; prohibit the Labor Code violations redressable under PAGA and provide grievance and binding arbitration to redress them; expressly waive PAGA in clear and unambiguous terms; and authorize the arbitrator to award all Labor Code remedies. |

- ✓ **Why the distinction matters.** The Wage Order 16 and Labor Code provisions in the first six rows change what the employer owes. When the CBA qualifies, its terms largely replace the statutory rule for the employees it covers, and those terms must be followed. The PAGA exemption in § 2699.6 changes where a dispute is resolved, not what the employer owes. The Labor Code applies in full to employees covered by a qualifying CBA, and alleged violations are pursued through the agreement's grievance and arbitration procedure instead of a PAGA lawsuit.
- ✓ Two practical consequences follow. First, qualifying for § 2699.6 does not excuse compliance: a contractor with a qualifying CBA still owes meal periods, rest periods, overtime, accurate wage statements, and reimbursement, unless one of the other exemptions separately applies. Second, qualifying for one of the other exemptions does not remove PAGA exposure: a CBA that satisfies § 514 for overtime, but does not expressly waive PAGA, leaves covered employees free to bring PAGA claims for everything else, such as wage statement or reimbursement violations.

**The practical takeaway:** a single CBA may qualify for all, some, or none of these provisions, and the answer can differ for different crews, classifications, or projects. Contractors should review each agreement, including any master labor agreement, local addenda, and project labor agreement, against each row of the table, confirm which employees and what work the agreement actually covers, and ideally have counsel confirm the results in writing.

# 9. The Reasonable-Steps Blueprint

The 15% and 30% penalty caps introduced by the 2024 reforms are the single most consequential compliance incentive in California employment law in a decade. **They apply only if the employer can show, on the record, that it took all reasonable steps to comply.** What follows is a concrete framework for building that record, organized around the four statutory factors.

## 9.1 Periodic payroll audits and corrective action

- ✓ Conduct a documented wage-and-hour audit at least annually. Cover every topic in Section 5 above.
- ✓ Use outside counsel for the audit when the exposure warrants privilege. The audit report itself, if properly structured, may be attorney work product.
- ✓ For every finding, document the corrective action taken, the date taken, and who took it.
- ✓ For every corrective action, verify implementation in the next payroll cycle and again 30 days later. An uncorrected finding is worse than no finding.
- ✓ Between annual audits, run monthly or quarterly spot audits on the highest-risk items: meal period compliance, missed-break premium pay, off-the-clock time, and expense reimbursement.

## 9.2 Lawful written policies, disseminated

- ✓ The employee handbook is reviewed annually by counsel and reissued when California law changes materially (which it does every year).
- ✓ Each employee signs a handbook acknowledgment on hire and again on each reissuance.
- ✓ Standalone written policies exist for meal and rest periods, timekeeping, off-the-clock work, business expense reimbursement, and final pay — and are physically posted at the yard and each active jobsite.
- ✓ Multilingual policies are provided where the workforce warrants (Spanish is standard in California construction).
- ✓ An arbitration agreement, if used, is a separate standalone document — mutual, mandatory as a condition of employment, and structured to comply with California Supreme Court and Ninth Circuit case law. It should exclude bargaining-unit employees.

## 9.3 Supervisor and employee training

- ✓ New-hire wage-and-hour orientation for every employee, documented with a signed acknowledgment.
- ✓ Annual refresher training for all employees on meal and rest periods, timekeeping, and reporting non-compliant breaks.
- ✓ Separate, more intensive training for all supervisors on Labor Code and Wage Order 16 compliance, on when a break is non-compliant, on how to authorize and enforce breaks in the field, and on when to escalate to HR or counsel.

## 9.4 Corrective action for supervisors

- ✓ Every supervisor's written job description includes wage-and-hour compliance responsibilities.

- ✓ Every supervisor's annual performance evaluation includes a compliance score with documented supporting examples.
- ✓ Non-compliance is on the same discipline escalation as safety non-compliance: coaching, written warning, suspension, termination.
- ✓ The paper trail exists. When a foreman is coached about running past a meal period, the coaching is documented in the supervisor's file with the date and the specific issue.

## Reasonable-Steps Blueprint Cycle



# 10. Best-Practices Checklist

A simple action list for every California construction employer. If you cannot check every box, the items you cannot check are where the next PAGA notice will land.

## Workforce map

- [ ] A current list of each employee group (union field, non-union field, shop/yard, office/management), the wage order that applies to it, the CBA(s) that cover it, and which CBA exemptions counsel has confirmed for that group.

## Policies and documentation

- [ ] Current, California-compliant employee handbook with signed acknowledgment on file for every employee.
- [ ] Standalone written meal and rest period policy, physically posted at yard and each active jobsite, with a signed acknowledgment on file for each employee.
- [ ] Standalone written timekeeping policy, prohibiting off-the-clock work, requiring contemporaneous minute-level entries, and requiring employee acknowledgment.
- [ ] Standalone written business expense reimbursement policy covering tools, PPE, phones, mileage, and uniforms.
- [ ] Compliant wage statement template covering all nine § 226(a) items plus § 246(i) sick leave.
- [ ] Mutual, standalone arbitration agreement with class action waiver, executed on hire (non-union employees).

## Operations

- [ ] Timekeeping system captures start of shift, meal out, meal in, end of shift — to the minute, contemporaneously, with employee acknowledgment.
- [ ] No rounding. All rounding features in the payroll system disabled.
- [ ] Meal periods begin before the end of the fifth hour on every applicable shift. Foremen enforce.
- [ ] Missed, late, short, and interrupted breaks are reported by employees on a documented channel, coded by reason, and paid with one-hour premium at the regular rate on the next paycheck.
- [ ] Reimbursement is a monthly (or per-payroll) cycle with a defined submission process, not an "ask your foreman" system.
- [ ] Drive time between yard and jobsite (when required) and between jobsites (always) is on the clock at the proper rate.

- [ ] Reporting-time pay is issued when crews are sent home short of scheduled hours.

## Payroll math

- [ ] Regular rate calculations include all non-discretionary bonuses, shift differentials, piece-rate earnings, and commissions.
- [ ] Meal and rest period premiums are paid at the regular rate of compensation, not base rate.
- [ ] Flat-sum bonuses are divided by non-overtime hours actually worked (Alvarado method).
- [ ] Retroactive bonuses trigger true-up overtime.
- [ ] Final pay is issued on the last day for involuntary separations and within 72 hours for voluntary quits without notice.

## Training and audits

- [ ] Annual wage-and-hour compliance audit, documented, with corrective actions tracked to closure.
- [ ] Annual wage-and-hour training for all employees; more intensive training for supervisors.
- [ ] Supervisor performance evaluations include a documented compliance component.
- [ ] Retaliation-free channel for employees to raise wage-and-hour concerns.

## CBA-covered work (if applicable)

- [ ] Written confirmation from counsel that each CBA satisfies all six elements of Labor Code § 2699.6.
- [ ] Grievance procedure is used, not resisted, when wage-and-hour disputes arise.
- [ ] Non-CBA employees (office, management, non-union field) are covered by all the general compliance items above — the exemption does not reach them.

## If a PAGA notice arrives

- [ ] Get it to counsel the same day.
- [ ] Issue litigation hold within days.
- [ ] Let counsel handle all contact with the employee's attorney.
- [ ] Assess standing, cure, exemption, and reasonable-steps position.
- [ ] Use every day of the 33-day cure windows or 60-day reasonable steps window.

# About the California PAGA Task Force

The California PAGA Task Force was established in 2026 at the request of NECA District 9 Vice President Fred Neubauer, under the direction of Western Region Executive Director Nicole Hite, in response to concerns raised by California NECA members and chapters. Facilitated by NECA Western Region Field Representative Sam Dugan, the Task Force brings together contractors and NECA representatives to develop practical resources and coordinate a statewide response to the challenges posed by PAGA.

Its work includes contractor education, collaboration with legal professionals, and the exchange of PAGA exemption language, bargaining strategies, and lessons learned across chapters and collective bargaining agreements. This guide, funded by the California Statewide Legal Fund, is one resource developed through that effort.

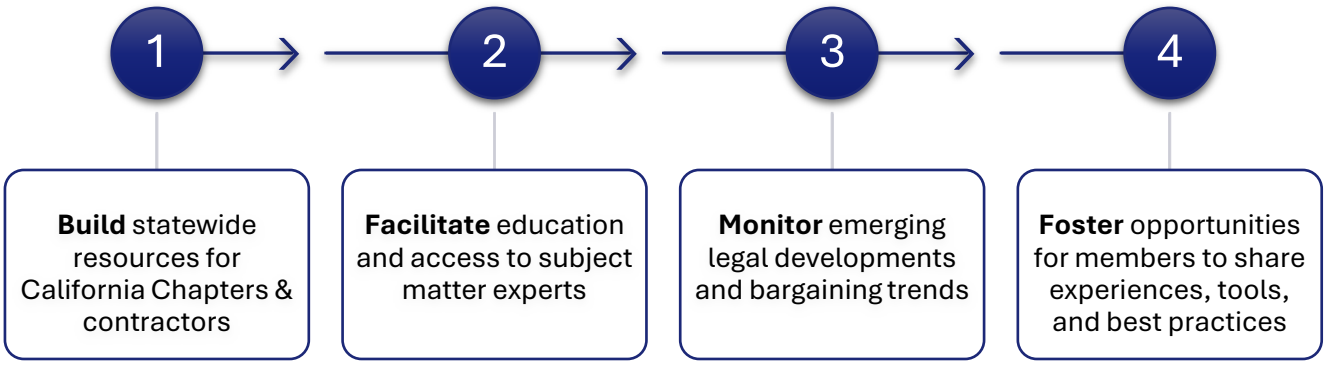
### Task Force Contractors

- ArchKey Solutions
- Briggs Electric
- Collins Electrical Company, Inc.
- Morrow-Meadows Corporation
- Neubauer Electric
- NSW Integrated Systems
- Phil Haupt Electric
- Quanta Services
- Taft Electric Company

### Task Force NECA Chapters

- East Central California
- Northern California
- Oregon Pacific-Cascade
- Redwood Empire
- San Diego
- Santa Clara Valley

## The California PAGA Task Force's *Mission*




## How you can help:

- **Ask Questions.** Submit questions you would like the Task Force to explore with legal professionals, NECA National staff, or the IBEW.
- **Contribute Agreements & Language.** Provide agreements, PAGA exemption language, related bargaining information, and updates to help keep statewide resources current.
- **Share Your PAGA Experiences.** Offer insights from claims, settlements, litigation, outcomes, and lessons learned.
- **Suggest Best Practices.** Tell us about successful bargaining strategies, implementation ideas, practical tools, and innovative approaches.

**To contribute/learn more: contact Sam Dugan through your local NECA chapter.**

# Agreement Spreadsheet

## PAGA exemption language in California agreements

Scan the QR code to access the agreement spreadsheet. Information in the spreadsheet should be verified with the applicable NECA chapter. The presence of PAGA exemption language does not, by itself, establish that an agreement satisfies every requirement for the exemption.

**DIGITAL RESOURCE**

Scan to access PAGA resources.

*https://www.wrneca.org/wr-paga*

# About Sweeney Mason LLP

Sweeney Mason LLP is a Los Gatos–based law firm that represents employers, businesses, and their owners throughout California. Our employment practice concentrates on the labor and wage-and-hour issues that California employers actually face day to day: PAGA and class action defense, wage-and-hour audits, arbitration agreements, employee handbooks, executive employment agreements, workplace investigations, and single-plaintiff litigation.

Rachael E. Brown is a partner in the firm's employment group and represents employers, primarily in the construction, staffing, restaurants, professional services, and tech industries, in wage-and-hour litigation and compliance matters. She can be reached at 408-356-3000 or reb@smllp.com.

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