

## **Governor Schwarzenegger Signs Legislation Scaling Back California's "Sue Your Boss" Law**

**August 12, 2004**

California Governor Arnold Schwarzenegger today signed SB 1809, overhauling last year's Labor Code Private Attorneys General Act ("PAGA")-one of the worst pieces of legislation to come out of Governor Davis's last days in office. This law allowed for potentially huge penalties to be recovered from a California employer for any violation of California's encyclopedic Labor Code, no matter how obscure or trivial.

Recognizing how destructive PAGA, a.k.a. the "Bounty Hunter Law" or "Sue Your Boss Law," was to the California business community, Governor Schwarzenegger held up California's budget until revisions were enacted. SB 1809, which takes effect immediately, was passed by the California legislature on July 29 and signed by Governor Schwarzenegger on August 12, 2004. Although this law does not achieve the outright repeal of PAGA that employers were hoping for, it does eliminate or soften some-but not all-of PAGA's worst features.

Among its key provisions, SB 1809:

- Prohibits employees from bringing a PAGA action for violations of posting, notice, agency reporting or filing requirements of the Labor Code, other than a filing or reporting requirement relating to mandatory payroll or workplace injury reporting. (This provision is retroactive to all lawsuits filed since January 1, 2004.)
- Repeals Labor Code Section 431, which required an employer to file in the office of the Division of Labor Standards Enforcement a copy of the form of any application for employment that the employer requires an applicant to sign.
- Requires court review and approval of all PAGA settlements and provides courts with discretion to reduce PAGA penalties.
- Establishes specific procedures an aggrieved employee must follow prior to filing a PAGA lawsuit, including providing the employer and California's Labor and Workforce Development Agency with written notice of alleged violations. For certain alleged violations, the employer can then avoid a PAGA suit by "curing" the alleged violation within 33 days of the mailing date of the employee's notice, and providing written notice back to the employee.
- Bars a PAGA lawsuit if a California agency cites an employer for the same type of Labor Code violation within specified time frames.

Notwithstanding these helpful revisions, some of the worst features of PAGA remain, and thus employers are still vulnerable to being sued over numerous Labor Code sections. Therefore, employers operating in California should continue to take steps to reduce exposure, by reviewing policies, handbooks and postings. Morgan Lewis Resources has developed a “California Employment Process Review” to assist employers in identifying and correcting potential PAGA and other California employment law violations. For more information about the California Employment Process Review, click on the following link:

[http://www.morganlewisresources.com/pubs/CA%20Process%20Review\\_MLR\\_Masthead.pdf](http://www.morganlewisresources.com/pubs/CA%20Process%20Review_MLR_Masthead.pdf)

The new legislation takes effect immediately. The text of SB 1809 can be reviewed by clicking:

[http://www.leginfo.ca.gov/pub/bill/sen/sb\\_1801-1850/sb\\_1809\\_bill\\_20040729\\_enrolled.html](http://www.leginfo.ca.gov/pub/bill/sen/sb_1801-1850/sb_1809_bill_20040729_enrolled.html)

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