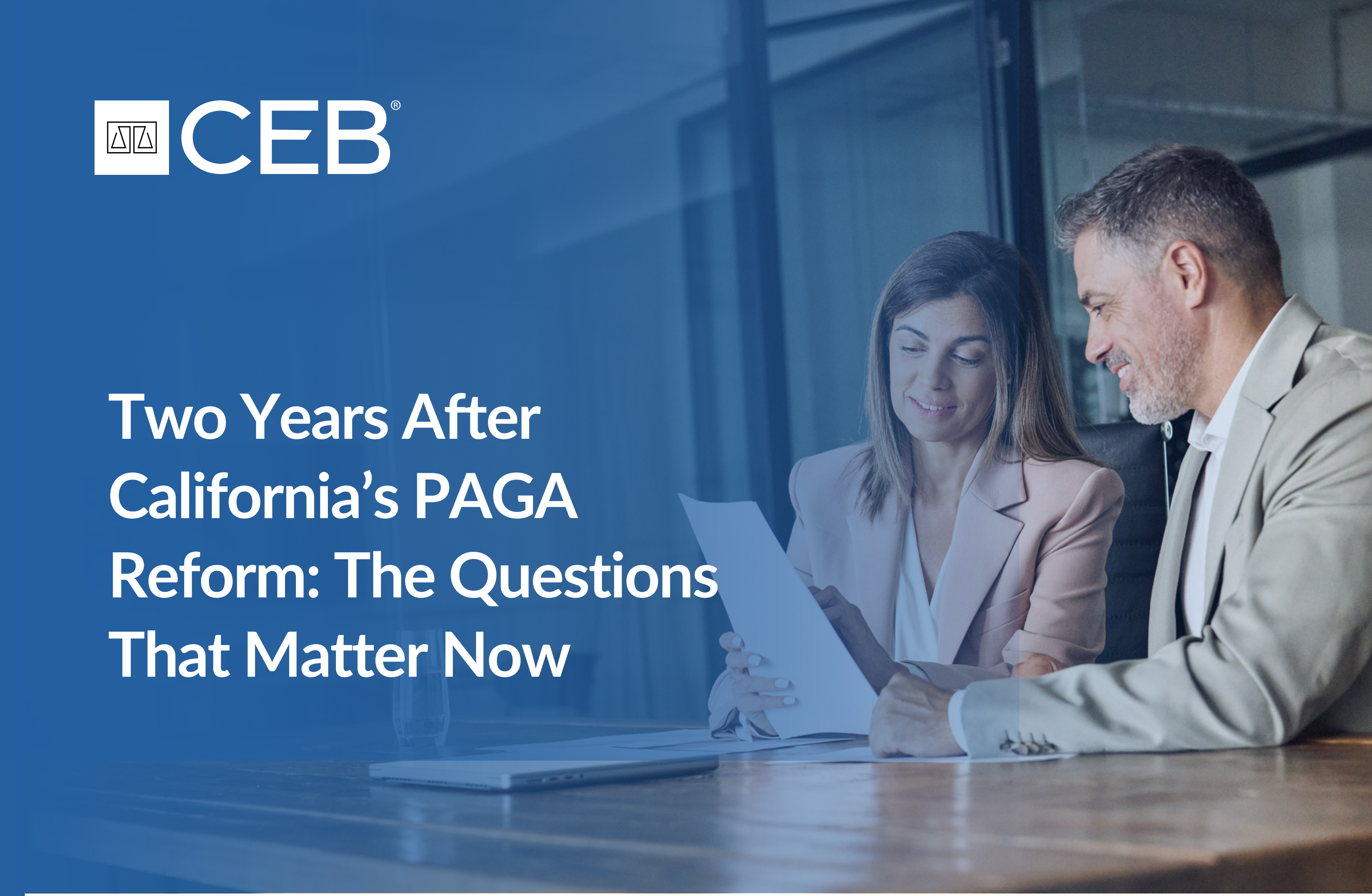

Two Years After California's PAGA Reform: The Questions That Matter Now

Two years after California overhauled the Private Attorneys General Act (PAGA), the easy questions are answered. The harder questions that could determine how the next generation of PAGA cases play out are only now reaching the courts.

Enacted in 2003 and effective Jan. 1, 2004, PAGA was intended to supplement the state's labor law enforcement efforts by allowing aggrieved employees to pursue civil penalties on the state's behalf. Two decades later, Assembly Bill 2288 and Senate Bill 92 substantially revised PAGA, changing standing requirements, expanding opportunities to cure certain violations, revising the penalty structure and giving trial courts additional tools to manage representative actions.

Statutes answer some questions and create others.

The appellate courts have only begun interpreting the revised PAGA statute. At the same time, California employment law continues to evolve as courts interpret the Labor Code and applicable Industrial Welfare Commission (IWC) wage orders. Because PAGA is an enforcement mechanism, not an independent source of employee rights, both developments matter.

Here's what to know as the next phase of PAGA litigation takes shape.

What have the courts started interpreting?

The first wave of litigation has focused on familiar threshold questions, such as: Who has standing? What happens when arbitration agreements are involved? How much discretion do trial courts have to manage representative actions before they become unmanageable? Standing naturally comes first because the Legislature rewrote the requirements.

Before the reforms, the California Supreme Court interpreted the former statute broadly in ***Kim v. Reins International California Inc.*** The 2024 amendments narrowed the statutory definition of an **"aggrieved employee,"** requiring a closer relationship between the plaintiff and the Labor Code violations being pursued.

Until the appellate courts provide further clarification, that change makes the facts surrounding the named plaintiff more important at the outset. Plaintiffs' lawyers have reason to identify early which alleged violations the employee personally experienced. Defense lawyers will be asking the same question from the other direction.

Arbitration remains another area where practitioners continue to look to existing precedent. The reforms did not alter the principles established by **Viking River Cruises, Inc. v. Moriana** or the California Supreme Court's subsequent decision in **Adolph v. Uber Technologies, Inc.** Questions about what proceeds to arbitration and what remains in court continue to rise alongside the new statutory provisions. Trial management may ultimately prove just as significant.

Representative actions often involve multiple job classifications, locations, supervisors and alleged Labor Code violations. The amended statute expressly gives trial courts **case-management tools** to keep representative actions manageable.

That puts the proof problem on the table earlier. Plaintiffs may need to think sooner about whether they can show the alleged violations through common policies, payroll data, time records or other shared evidence. Defendants have reason to look for the opposite, such as evidence that varies by employee, location, manager or job classification. Courts have not yet drawn the lines, but both sides can anticipate the questions.

Why labor code decisions still drive PAGA litigation

It is easy to think every important PAGA development comes from a case interpreting PAGA. Most do not.

PAGA creates a mechanism for recovering civil penalties on behalf of the state. It does not establish the underlying workplace obligations. Those duties come from the Labor Code and the applicable IWC wage orders.

The distinction is more than academic. Every time an appellate court interprets a wage-and-hour statute, whether involving meal periods, wage statements, expense reimbursement, overtime or waiting-time penalties, it also defines the substantive violations that may later support a PAGA claim.

PAGA litigation therefore continues to develop on two tracks. One line of cases interprets the enforcement statute itself. The other interprets the Labor Code provisions PAGA plaintiffs seek to enforce. For practitioners, that means following California employment law broadly rather than treating PAGA as a self-contained body of doctrine.

The reforms are in place, but case law is only beginning to develop

The lack of appellate guidance does not mean practitioners should wait for the law to develop. The reforms have already changed the questions that matter at the outset of a PAGA case. What violations did the employee personally experience? What steps did the employer take to prevent them? How did it respond once a problem surfaced? Can the alleged violations be established through common evidence? And what documentation exists to support those answers?

Courts will eventually define the boundaries of the revised statute. Until then, the records practitioners build and the facts they develop now may shape how those questions are answered later.