

THIRD READING

Bill No: SB 310
Author: Wiener (D), et al.
Amended: 1/20/26
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 4/9/25
AYES: Smallwood-Cuevas, Cortese, Durazo, Laird
NOES: Strickland

SENATE JUDICIARY COMMITTEE: 10-2, 4/22/25
AYES: Umberg, Allen, Arreguín, Ashby, Durazo, Laird, Stern, Wahab, Weber
Pierson, Wiener
NOES: Niello, Valladares
NO VOTE RECORDED: Caballero

SENATE APPROPRIATIONS COMMITTEE: 5-1, 5/23/25
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto
NO VOTE RECORDED: Dahle

SUBJECT: Failure to pay wages: penalties

SOURCE: California Rural Legal Assistance Foundation
Legal Aid at Work

DIGEST: This bill establishes a new method for employees to recover a statutory penalty for employer late wage payment violations. This bill authorizes an employee to recover a statutory penalty through an independent civil action, rather than through the Labor Commissioner's Office (LC), or enforcement of a civil penalty through the Private Attorneys General Act (PAGA). This bill also limits an employee to either pursuing a statutory penalty or enforcing a civil penalty through PAGA, but not both.

Senate Floor Amendments of 1/20/26 narrow the scope of this bill so that an employee can only pursue an independent civil action for each subsequent violation, or any willful or intentional violation, but not for an initial violation.

ANALYSIS:

Existing law:

- 1) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA) and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50.5)
- 2) Establishes within DIR, various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay in every workplace and promoting economic justice through robust enforcement of labor laws. (Labor Code §79-107)
- 3) Authorizes the LC to prosecute all actions for the collection of wages, penalties, and demands of persons who in the judgment of the LC are financially unable to employ counsel and the LC believes have claims which are valid and enforceable. This includes an action for the collection of wages and other moneys payable to employees or to the state arising out of an employment relationship or order of the Industrial Welfare Commission and actions for wages or other monetary benefits that are due the Industrial Relations Unpaid Wage Fund. (Labor Code §98.3)
- 4) Authorizes the LC to investigate employee complaints and provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or statute, as specified. (Labor Code §98)
- 5) Provides that within 30 days of the filing of a complaint, the LC shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3 or whether no further action will be taken. If the determination is made by the LC to hold a hearing, the hearing shall be held within 90 days of that determination. However, the LC may postpone or grant additional time before setting a hearing, as specified. (Labor Code §98)

- 6) Establishes a citation process for the LC to enforce violations of the minimum wage, as specified. (Labor Code §1197.1 et seq.)
- 7) Authorizes employees, under PAGA, to enforce labor laws by suing their employers on behalf of the state for violations of the Labor Code to recover civil penalties, as specified. (Labor Code §2699-2699.8)
- 8) Provides that for PAGA notices filed on or after June 19, 2024, 65 percent of the recovered penalties goes to the State and 35 percent to the aggrieved employees. (Labor Code §2699)
- 9) Provides that in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded only if the court finds that the employee brought the court action in bad faith. This does not apply to an action brought by the LC. (Labor Code §218.5)
- 10) Specifies when wages must be paid for work performed in various positions and industries. (Labor Code §§201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5)
- 11) Prohibits, under the California Equal Pay Act, an employer from paying an employee wage rates less than the rates paid to employees of the opposite sex or to employees of a different race or ethnicity for substantially similar work requiring the same skills, effort, and responsibility when performed under similar working conditions. Establishes exceptions to this prohibition, as specified. (Labor Code §1197.5)
- 12) Imposes a civil penalty, in addition to any penalties that normally apply, to any employer who fails to pay the wages of their employees by the required time, as follows:
 - a) \$100 dollars for each failure to pay each employee for any initial violation;
 - b) \$200 dollars for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld, for any subsequent or intentional violation.(Labor Code §210(a))

- 13) Provides that the penalty referenced in 12), above, can be recovered by an employee as a statutory penalty, pursuant to Section 98 (DLSE wage hearing), or by the LC as a civil penalty through the issuance of a citation or pursuant to Section 98.3. (Labor Code §210(b))
- 14) Provides that an employee is only entitled to recover the penalty in 12), above, through either the statutory penalty pursuant to Section 98 (DLSE wage hearing) or to enforce a civil penalty through PAGA, but not both for the same violation. (Labor Code §210(c))

This bill:

- 1) Authorizes an employee to recover a statutory penalty for employer late wage payment violations through an independent civil action for each subsequent violation, or any willful or intentional violation, but not for an initial violation.
- 2) Specifies that an employee is only entitled to recover the penalty described in 12), above, as a statutory penalty through a complaint to the LC or through an independent civil action, or as a civil penalty through PAGA, but not both for the same violation. An employee cannot pursue a statutory and a civil penalty for the same violation.
- 3) Provides that these provisions are severable. If any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Background

What constitutes a late payment violation? Generally, Labor Code Section 204 governs regular payment of wages and requires that wages earned are due twice during each calendar month, on days designated in advance by an employer as the regular paydays. Work performed between the 1st and 15th days, inclusive, of any calendar month must be paid for between the 16th and the 26th day of that same month. Work performed between the 16th and the last day of any calendar month, must be paid for between the 1st and 10th day of the following month. Additionally, overtime wages earned in one payroll period must be paid no later than the payday for the next regular payroll period. Late payment of wages includes when an employer pays wages late, fails to pay them at all, or insufficiently pays them.

This is the general rule. The Labor Code also provides different pay schedules for temporary service employees (Labor Code §201.3), employees of a motor vehicle

dealer (Labor Code §204.1), hairstylists (Labor Code §204.11), and live-in domestic workers (Labor Code §205), among others.

By themselves, none of the above code sections specify penalties for late payments. Instead, Labor Code Section 210 identifies applicable penalties and authorizes the LC or an employee to recover them, as specified. The penalties are as follows: for any initial violation, \$100 for each failure to pay each employee or for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

Recovering Penalties for Late Payment Violations. Labor Code Section 210 authorizes the LC or an employee to recover penalties for late payment violations. The LC can do so by pursuing civil penalties. An employee can do so by pursuing either civil *or* statutory penalties. The percentage of the penalty that an employee recovers depends on their choice of penalty.

Civil Penalties. The LC can recover civil penalties for late payment violations through the issuance of a citation or through an informal conference. In these instances, recovered penalties are paid to the State.

PAGA allows employees to assist in enforcing labor law by suing their employers on behalf of the State for violations of the Labor Code to recover civil penalties. Any employee who receives their wages late can file a PAGA lawsuit. For PAGA cases filed on or after June 19, 2024, 65 percent of the recovered penalties are paid to the State and 35 percent to the aggrieved employee.

Statutory Penalties. Beginning in 2020, employees were authorized to recover statutory penalties for late payment violations through the LC's wage claim process (AB 673, Carrillo, 2019). Statutory penalties are paid entirely to the employee, as opposed to civil penalties pursued through PAGA. An employee cannot simultaneously pursue statutory and civil penalties for the same violation.

This bill. The author and sponsors argue that the LC's extensive backlog of wage claim cases, as well as PAGA's 35 percent recovery limit, discourage workers from pursuing penalties for late payment violations. SB 310 would establish a new method for employees to recover penalties by authorizing an independent civil action for each subsequent violation, or any willful or intentional violation. For an initial violation, an employee would be limited to pursuing either a statutory penalty, through the LC, or a civil penalty through PAGA. This bill would also prohibit an employee from pursuing a statutory penalty and a civil penalty simultaneously for the same violation.

[NOTE: Please see the Senate Labor, Public Employment and Retirement Committee analysis on this bill for more background information on the DLSE audit, wage theft, and related legislation.]

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- The Department of Industrial Relations (DIR) indicates that its costs to administer the bill would be minor and absorbable.
- This bill could result in a reduction in state penalty revenue resulting from the Private Attorneys' General Act (PAGA). The magnitude is unknown, but potentially minor (Labor and Workforce Development Fund). According to the Legislative Analyst's Office, employees and employers typically reach a settlement agreement after initial legal proceedings have begun but before the trial begins. The settlement award typically includes a small penalty portion that is divided between the employees and the State, as specified.
- By offering specified employees an option to pursue, through an independent civil action, an increase of the percentage amount of penalty revenue they would receive relative to current law, this bill would result in cost pressures to the state funded trial court system (Trial Court Trust Fund, General Fund). It is unclear how many proceedings would actually be commenced that otherwise would not have as a result of this bill. The fiscal impact of this bill to the courts would depend on many unknown factors, including the number of proceedings and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. The Governor's 2025-26 budget proposes a \$40 million ongoing increase in discretionary funding from the General Fund to help pay for increased trial court operation costs beginning in 2025-26. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations (See Staff Comments).

SUPPORT: (Verified 1/21/26)

California Rural Legal Assistance Foundation (Co-source)

Legal Aid at Work (Co-source)

Asian Americans Advancing Justice Southern California

Asian Americans and Pacific Islanders for Civic Empowerment

Asian Law Caucus
California Coalition for Worker Power
California Domestic Workers Coalition
California Employment Lawyers Association
California Farmworker Coalition
California Federation of Labor Unions
California Food and Farming Network
California Nurses Association
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Center for Workers' Rights
Central California Environmental Justice Network
Central Coast Alliance United for a Sustainable Economy
Centro Binacional Para El Desarrollo Indigena Oaxaqueño
Chinese Progressive Association
Clean Carwash Worker Center
Farm2people
Inland Empire Labor Council
LA Raza Centro Legal
Legal Link
Loyola Law School, the Sunita Jain Anti-Trafficking Initiative
Mexican-American Legal Defense and Ed Fund
Mixteco Indigenous Community Organizing Project
National Employment Law Project
Pilipino Workers Center
Public Counsel
Santa Clara County Wage Theft Coalition
Sierra Harvest
Trabajadores Unidos Workers United
UC Hastings Community Justice Clinics
United Food and Commercial Workers Western States Council
Wage Justice Center
Western States Council Sheet Metal, Air, Rail and Transportation
Worksafe
Individual Support Letters: 2

OPPOSITION: (Verified 1/21/26)

Acclamation Insurance Management Services
Agricultural Council of California

Allied Managed Care
American Council of Engineering Companies
American Petroleum and Convenience Store Association
American Staffing Association
Anaheim Chamber of Commerce
Asian Business Association
Associated Builders and Contractors of California
Associated Equipment Distributors
Associated General Contractors California
Associated General Contractors San Diego
Brea Chamber of Commerce
California Alliance of Family-Owned Businesses
California Assisted Living Association
California Association for Health Services At Home
California Association of Health Facilities
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Attractions and Parks Association
California Automotive Wholesalers' Association
California Building Industry Association
California Chamber of Commerce
California Construction and Industrial Materials Association
California Craft Brewers Association
California Farm Bureau
California Financial Services Association
California Fuels and Convenience Alliance
California Hispanic Chambers of Commerce
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractors Association
California League of Food Producers
California New Car Dealers Association
California Pest Management Association
California Restaurant Association
California Retailers Association
California Staffing Professionals
California Trucking Association
Carlsbad Chamber of Commerce
Carson Chamber of Commerce
Central Valley Business Federation

Chino Valley Chamber of Commerce
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Family Business Association
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Gateway Chambers Alliance
Golden Gate Restaurant Association
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hayward Chamber of Commerce
Hollywood Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
International Warehouse Logistics Association
LA Cañada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Leading Age California
Livermore Valley Chamber of Commerce
Long Beach Chamber of Commerce
Los Angeles Area Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Association of Theatre Owners of California
National Federation of Independent Business
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Pacific Association of Building Service Contractors
Paso Robles Templeton Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association
Rancho Cordova Area Chamber of Commerce
Rancho Mirage Chamber of Commerce
Roseville Area Chamber of Commerce

San Diego Regional Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Southern California Rental Housing Association
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
United Contractors
Valley Industry and Commerce Association
West Ventura County Business Alliance
Western Car Wash Association
Western Electrical Contractors Association
Western Growers Association
Wine Institute

ARGUMENTS IN SUPPORT: The sponsors of the measure, the California Rural Legal Assistance Foundation and Legal Aid at Work, argue:

“Under current law, all wages are generally due and payable twice during each calendar month on days designated in advance by the employer as the regular paydays. When wages are not paid on time, this can cause extreme financial hardship for the many employees living paycheck to paycheck, who rely on a timely paycheck to pay for food, rent, and other daily necessities. Moreover, this delay in payment essentially amounts to an interest-free loan from the employee to the employer.

Prior to 2019, there was no explicit remedy for employees who were not paid on their designated payday. AB 673 (Carrillo, 2019) amended Labor Code section 210 to allow workers to recover penalties for such violations through a Labor Commissioner Office (LCO) wage claim hearing or through a PAGA civil action. However, in a PAGA action, aggrieved workers recover only 35% of the assessed penalty amount – the remaining 65% goes to the state. If a worker chooses instead to pursue her claim with the LCO, she will have to wait two to five years to even get a hearing date because of the extensive backlog of wage claims.

SB 310 would amend Labor Code section 210 so that an employee can recover 100% of the penalties due to her for late payment of wages through an independent civil action. Enactment of this bill would positively affect a worker who might be

discouraged from pursuing her claim for 100% of penalties because of the inordinate delays at the LCO, and discouraged from pursuing PAGA litigation because she would only receive 35% of the penalty intended to compensate her for the negative consequences of late payment. Importantly, the amount of penalties the employer must pay in a civil action would remain the same as what the employer would pay in a PAGA action or in an LCO wage claim hearing.”

ARGUMENTS IN OPPOSITION: A coalition of opponents, including the California Chamber of Commerce, argue:

“SB 310 undermines the recent PAGA reform by gifting trial attorneys a new means of leveraging wage and hour cases against employers of every size for high settlements...

SB 310 is problematic because it introduces a new pathway for trial attorneys to exploit penalties as leverage in meritless wage-and-hour cases – precisely the type of conduct that the PAGA reforms were designed to curb. SB 310 creates a private right of action to seek penalties under Labor Code section 210. Labor Code section 210 authorizes penalties of \$100 or \$200 per violation of multiple Labor Code provisions, including section 204. Presently, those penalties are recoverable by the Labor Commissioner or through PAGA. In fact, PAGA was created to serve as the private right of action for a plaintiff to seek penalties that had historically only been collectable by the Labor Commissioner, like section 210. Now, some attorneys are arguing that PAGA is insufficient, advocating for the creation of additional private rights of action.

There are several key concerns with SB 310. First, Labor Code section 204 violations are among the most common ‘derivative claims’ in wage-and-hour lawsuits. Under the derivative claim theory, if an employee asserts they are owed even a single dollar, it can be argued that their wages are late and that section 204 has therefore been violated. This strategy is often employed to increase leverage in class action cases and is typically coupled with claims that are difficult for employers to disprove, such as off-the-clock work or missed rest breaks. A violation of section 204 triggers penalties under section 210. By allowing these penalties to be pursued through a new private right of action, SB 310 effectively legitimizes the practice of pleading these derivative claims, even when there is no merit.

Second, SB 310 does not protect against stacking of penalties. While section 210 provides that the penalty cannot be stacked with PAGA for the ‘same violation,’ it does not prohibit both 210 and PAGA from being claimed in the same complaint.

This is precisely what trial attorneys aim to do: claim section 210 penalties for one derivative violation of section 204, while pursuing PAGA penalties for all other alleged violations. The practical consequence of SB 310 is that it becomes a procedural tool to inflate the overall settlement value of a case.

Granting trial attorneys a new mechanism to further inflate settlement values on the heels of PAGA reforms undermines this Legislature's efforts to curb litigation abuse."

Prepared by: Emma Bruce / L., P.E. & R. / (916) 651-1556
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