

ALERT

CalChamber Wraps Historic Legislative Year with Major Wins for Business



California's 2024 legislative session concluded on August 31, bringing numerous

victories for the state's business community.

Throughout the year, the California Chamber of Commerce spearheaded key negotiations and helped shape pivotal legislation, including a landmark bill package that reforms California's Private Attorneys General Act (PAGA); and a bipartisan package of retail reforms that provide important tools for law enforcement and prosecutors to crack down on

organized crime rings and retail thieves.

The CalChamber also successfully pushed through legislation that will enhance artificial intelligence (AI) literacy, bolster California's energy resilience, and extend the deadline for hospitals' seismic safety mandates, among other key bills.

A Win for Goods Movements and Logistics Projects

On August 31, legislators passed **AB 98 (J. Carrillo; D-Palmdale)**, a bipartisan-supported bill that establishes rules for certain truck routes, warehouse design, and build standards for specified classes of warehouse development projects.

The CalChamber believes AB 98 offers a valuable compromise if signed into law. Given the ongoing risk of extensive legislation setting sector-destroying setbacks, an active attorney general suing cities, and local moratoriums affecting vital warehouse projects, this bill strikes an essential balance, allowing California's goods movement and logistics industry to continue to prosper.

CalChamber Stops Harmful Bills

The CalChamber was also instrumental in stopping numerous proposals that would have harmed job creation and the economy. Some of these harmful bills include:

- **AB 3211 (Wicks; D-Oakland)**: a bill that placed prescriptive and technologically infeasible requirements for AI watermarks;
- **AB 2930 (Bauer-Kahan; D-Orinda)**: a bill that would have affected every industry by requiring developers and deployers of automated decision tools (ADTs) to perform specified impact assessments prior to first using an ADT and annually thereafter;
- **SB 1446 (Smallwood-Cuevas; D-Los Angeles)**: a prescriptive mandate regarding the use of self-checkout stations that could have increased business operating costs by at least \$497.1 million annually;
- **SB 1327 (Glazer; D-Contra Costa)**: a job killer bill that would have taxed digital advertising revenue; and
- **SB 1272 (Laird; D-Santa Cruz)**:

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Effective CalChamber Advocacy Moves Support Bills to Governor's Desk



SUPPORT

In the final days of the legislative session, a number of bills supported by the California Chamber of Commerce passed the Legislature and now

await action by the Governor.

AI Literacy

• CalChamber-sponsored **AB 2876 (Berman; D-Palo Alto)** allows California to take a step forward in fostering an artificial intelligence-literate population and future workforce by teaching artificial intelligence (AI) literacy in schools. The bill requires the Instructional Quality Commission (IQC) to consider adding media literacy and AI literacy the next

time the State Board of Education adopts the instructional materials for the English language arts/English language development curriculum framework.

Health Care

• **SB 1432 (Caballero; D-Merced)** gives hospitals more time to comply with California's seismic safety mandate. The bill extends the January 1, 2030 deadline by which hospitals are required to be capable of continued operations following a major earthquake, until January 1, 2035. SB 1432 gives hospitals an abeyance from this same seismic compliance deadline until such time that adequate funding is made available to these hospitals.

Protects Against Theft

• **AB 2371 (J. Carrillo; D-Palmdale)** streamlines local permitting processes for electrified security fences, assisting

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Labor Law Corner

Military Caregiver Leave: When It Applies and When It Doesn't



David Leporiere
Employment Law
Expert

I know my business is covered by the federal Family and Medical Leave Act (FMLA) because we have more than 50 employees, but I received a request for an extended leave of absence that I'm not sure is covered by FMLA. What do I need to consider?

As explained in your Helpline request, the situation is as follows:

- One of your employees informed you that while she was on vacation, her husband was seriously hurt in a skiing accident and she is requesting time off to care for him. You provided her with the notice of rights and designation form, letting her know that she is entitled to take up to 12 weeks of time off to care for her husband.
- Your employee sent you a note from her husband's doctor stating that the employee needs 6 months of time off to care for her husband and his injuries.
- Your employee is claiming that because her husband is in the military, she is entitled to 26 weeks of time off under the FMLA to care for her husband.

Family Leave Differences

As you may know, the FMLA and the California corollary, the California Family Rights Act (CFRA) are identical in many situations, but there are a few differences.

One of those differences is that the FMLA provides up to 26 weeks of time off for an employee to care for a family member who is a member of the Armed Forces who has a "serious injury or illness." This is referred to as "Military Caregiver Leave."

The CFRA does not provide this type of extended leave, but oftentimes the "serious injury or illness" under the Military

Caregiver Leave would run concurrently with the 12 weeks of leave for a "serious health condition" under the CFRA.

In this situation, your employee would not be eligible for the extended leave, but simply the 12 weeks running concurrently under both the FMLA and the CFRA.

Extended Leave Parameters

The employee is not entitled to the extended leave because that is reserved for military services members who were injured in the line of duty on active duty in the Armed Forces, or who had an existing injury that was aggravated while in the line of duty in the Armed Forces.

In that your employee's husband was injured while skiing on a vacation, his injury was not one that was incurred in the line of duty or aggravated in the line of duty for the Armed Forces.

Such injuries incurred while engaged in activities outside of active duty do not provide for the extended Military Caregiver Leave but would qualify your employee for the 12 weeks of leave under the FMLA and CFRA.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred members and above. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com.

Labor and Employment

HR Boot Camp. CalChamber. September 12–13, Online. (800) 331-8877.

Sick Leave, Vacation, PTO: What California Employers Need to Know. CalChamber. September 16, Online. (800) 331-8877.

Supervisor Essentials: Workplace Compliance. CalChamber. September 26, Online. (800) 331-8877.

Supervisor Essentials: Wage and Hour. CalChamber. September 27, Online. (800) 331-8877.

International Trade

Complying with U.S. Export Controls. Bureau of Industry and Security,

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CalChamber Calendar

Women's Leadership Council:

September 12, Anaheim

ChamberPAC Advisory Committee:

September 12, Anaheim

Board of Directors:

September 12–13, Anaheim

International Trade Breakfast:

September 13, Anaheim

Next Alert: September 20

The Workplace

How Recent California Supreme Court Rulings Affect PAGA Litigation



In **Episode 204** of The Workplace podcast, CalChamber Labor and Employment General Counsel Bianca Saad and CalChamber

Associate General Counsel Matthew Roberts discuss two recent California Supreme Court decisions on California's Private Attorneys General Act (PAGA): *Stone v. Alameda Health System* and *Turrieta v. Lyft, Inc.*

Significant changes were made to PAGA this summer, starting with a reform package spearheaded by the CalChamber and signed by Governor Gavin Newsom in July, Roberts says. Two recent California Supreme Court decisions provide further relief for employers.

What Is PAGA?

Saad explains that PAGA allows aggrieved employees to essentially step into the shoes of the Attorney General and seek civil monetary penalties on behalf of themselves and all other similarly aggrieved employees, in addition to the underlying damages for several Labor Code violations.

For example, an aggrieved employee could bring an action for a meal and rest break violation, seeking damages for those claims, and then also bring a PAGA action seeking the civil penalties on top of those damages.

There are two types of penalties, default and non-default. Default penalties are where the underlying law doesn't have its own civil penalty structure. With non-default penalties, the penalties can stack up as they apply per pay period, per aggrieved employee, and may go back years, even for minor violations, such as a misprinted address on a wage statement.

"With all this put together, then there's a lot of money on the table, and that really encouraged litigation, instead of using it more as a solution of last resort," Roberts says.

Stone v. Alameda Health System

On August 15, 2024, the California Supreme Court issued a unanimous decision in *Stone v. Alameda Health System*,

concluding that public employers are exempt from various California Labor Code provisions and PAGA penalties.

The case involved a public health system created by law in collaboration with Alameda County and the State Legislature. This decision is important because there's a general rule of thumb that the California Labor Code doesn't apply to public entities unless the statute provides that it does, Saad explains. In *Stone*, employees with the Alameda Health System brought meal and rest break claims, among other Labor Code violations and a PAGA action.

Before *Stone*, the California Supreme Court had never definitively ruled on whether one could bring a PAGA action against any public entity. The Supreme Court looked at the authorizing statute for the health system and found ample evidence to suggest that the county and state governments intended to create the health system as a public entity, and therefore it's not covered by underlying Labor Code provisions, unless expressly stated in the law.

The California Supreme Court, then, using this principle, examined PAGA and determined that the Legislature, in writing and enacting PAGA, provided substantial evidence that the law did not apply to public entities, she says.

"So those of you who are public agencies, as you're defined by your authorizing statute, this is a huge win for you, because this essentially means no pocket claims will be brought against you, which you know avoids the time and expense of defending pocket claims. Unfortunately for our private entities and many of our members out there, this does not absolve us from coverage," Roberts says.

Turrieta v. Lyft, Inc.

In *Turrieta v. Lyft, Inc.*, the California Supreme Court limited a PAGA plaintiff's ability to intervene in another PAGA action and object to a settlement.

This case involved different PAGA actions, all against the same employer, but each of the plaintiffs filed some overlapping claims, which is a common scenario seen in PAGA litigation, Saad says.

For example, one plaintiff can file a PAGA action for misclassification of workers, unpaid overtime, failure to reim-

burse business expenses and failure to provide timely wage statements. Then another plaintiff can file a similar action for the similar time period, essentially bringing a second lawsuit for the same violations.

"So, then the question becomes, if one case settles, what happens to the overlapping lawsuit?" Saad asks.

The California Supreme Court determined that the purpose and the express language of PAGA doesn't allow PAGA plaintiffs to intervene or object to the settlement in another PAGA action.

This decision is a big win for employers, Roberts says, because they can move off of multiple lawsuits with one approved settlement. Oftentimes, however, getting to that point can be fairly costly.

"You're still going through the time and expense of preparing your defense, executing your defense, and then still, you know, resolving the matter," he says.

PAGA Reform

The reforms made to PAGA this year bring new benefits to limit employer liability overall, including the ability to significantly reduce exposure to potential PAGA penalties, Saad says.

Employers can limit their liability by taking what's referred to under the law as "all reasonable steps" to avoid or correct Labor Code violations. Not only can an employer be completely proactive, meaning they're taking all of these steps prior to ever receiving a notice of violations, but even after they've received a notice of violations, employers still have the ability to take all of these reasonable steps related to the alleged violations in order to limit their penalties.

Saad explains that "reasonable steps" can include:

- Payroll audits, and taking any related corrective action to the findings of those audits;
- Implementation and dissemination of lawful written policies related to Labor Code issues, such as meal and rest breaks, over time, timely payment of wages, etc.;
- Ensuring that supervisors are trained on lawful policies; and
- Taking corrective steps if supervisors fail to follow policies and procedures.

Supreme Court: No Right to Intervene, Object to PAGA Settlement



It's been a busy summer for California's Private Attorneys General Act (PAGA).

First, in July, California passed sweeping PAGA reform.

Then, in August, the California Supreme Court issued two decisions related to who can file or intervene in PAGA-related cases.

- In one case, the court held that employees cannot pursue PAGA claims against public entities.

- Now, in the other case, the court limits a PAGA plaintiff's ability to intervene in another PAGA action and object to a settlement (*Turrieta v. Lyft, Inc.*, No. S271721 (Aug. 1, 2024)).

The PAGA enables an "aggrieved employee" to act as a proxy for the state and recover civil penalties from employers for Labor Code violations. Before filing a PAGA action, an aggrieved employee must file a notice with the California Labor and Workforce Development Agency (LWDA).

Since PAGA was enacted, the number of PAGA notices filed with the LWDA has increased year after year. With increased filings comes the potential for multiple notices to be filed against the same employer alleging the same or similar claims. In fact, as the *Turrieta* court noted, this "has become a common scenario in PAGA litigation."

Turrieta v. Lyft

Overlapping PAGA actions create the potential for the parties in one action to reach a settlement that then resolves the overlapping claims in the other actions — which is exactly what happened in *Turrieta*.

Three former Lyft employees — Tina Turrieta, Brandon Olson and Million Seifu — filed separate actions against Lyft seeking PAGA penalties for Lyft's alleged failure to pay minimum wages, overtime premiums and business expense reimbursements.

While other cases were pending, Turrieta and Lyft reached a settlement that included an agreement that Turrieta would amend her complaint to include all PAGA claims that could have been brought against Lyft so those claims would be included in the proposed settlement.

Turrieta provided notice of the settlement to the LWDA and filed a motion with the court to approve the settlement, which is required for PAGA settlements. The LWDA did not oppose or object to the proposed settlement.

When Olson and Seifu learned of the proposed settlement, however, they both attempted to intervene in the *Turrieta* case and object to the settlement. The trial court rejected both parties' attempts on the grounds that they lacked standing to intervene and object. The court approved Turrieta's settlement and entered final judgment consistent with the settlement. Olson and Seifu filed a motion to vacate the judgment, which was denied on similar grounds.

Olson and Seifu appealed, and the Court of Appeal affirmed the trial court's

decision. Olson appealed to the California Supreme Court, which granted review to address the question of what right a plaintiff in a PAGA action has to intervene, object to or move to vacate a judgment in another PAGA action alleging overlapping claims.

Supreme Court Ruling

In a 5-2 decision, the California Supreme Court held that an employee prosecuting a PAGA action as a proxy for the state **does not** have the right to:

- Seek intervention in another employee's PAGA action;
- Move to vacate a judgment entered in the other action; or
- Require a court to receive and consider objections to a proposed settlement of that action.

The court relied on the PAGA's statutory language and the broader statutory scheme for their ruling.

Employers who are defending overlapping PAGA actions should consult legal counsel regarding this ruling's effect.

Reduce Exposure to Penalties

All employers — not just those who have received a PAGA notice or action — can take advantage of one key element of the PAGA reform — the ability to reduce their potential exposure to PAGA penalties by taking "reasonable steps" to comply with the Labor Code.

CalChamber's PAGA Wage and Hour Compliance Toolkit is chock-full of tools to help employers take those reasonable steps toward compliance.

Staff Contact: Erika Barbara

Effective CalChamber Advocacy Moves Support Bills to Governor's Desk

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businesses in being able to quickly install devices that protect against loss.

Benefits Emergency Response

- **SB 1152 (Limón; D-Goleta)** helps to deploy newest technology of backup generators so Californians can remain connected during emergencies.

Energy Resiliency

- **SB 1420 (Caballero; D-Merced)** Increases Hydrogen Deployment. Hastens the deployment of important hydrogen technology, which will allow California to meet its clean energy goals.

- **SB 1418 (Archuleta; D-Pico**

- **Rivera)** Hydrogen Fueling Stations: Expedited Review: Requires cities and counties to adopt an ordinance that creates an expedited, streamlined permitting process for hydrogen-fueling stations.

- **SB 983 (Wahab; D-Hayward)** Alternative Fuels Task Force. Helps the state research how best to incentivize and deploy alternative fuels.

Protecting Children

- **SB 764 (Padilla; D-Chula Vista)** Requires parents to establish a trust to ensure minors who are entertainers receive percentage of their income. Provides needed protections for children who are

filmed and posted on social media without access to the profits that were generated by their likeness and participation.

- **AB 1831 (Berman; D-Palo Alto)** AI Child Pornography. Creates a new crime for using AI to create child pornography.

Education Access

- **SB 1244 (Newman; D-Fullerton)** Expands College Access Program. Allows more school districts to operate dual enrollment programs with local community colleges, easing the pathway for more students to pursue career technical education or transfer to a four-year college via California's existing community colleges.

CalChamber Wraps Historic Year with Major Wins for Business

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a bill that would have required retailers to redeem gift certificates valued at less than or equal to \$25 in cash.

Moreover, all but one of the 15 job killer bills identified by the CalChamber this year were either killed or, in some cases, amended significantly to benefit the business community.

Veto Requests

The CalChamber's work at the Capitol is not yet done, however. A number of harmful proposals have been sent to the Governor's desk. Below are some of the bills the CalChamber will be asking the Governor to veto:

- **SB 1047 (Wiener; D-San Francisco):** Requires frontier AI developers to comply with certain requirements before beginning to initially train specified "covered models" to promote the safe and secure innovation of AI. Among other things, they must implement a specified written and separate safety and security protocol subject to significant liability, guarantee that no critical harm will ever arise, including from model derivatives, and implement the capability to promptly enact a full shutdown. Creates significant uncertainty for businesses due to vague, overbroad, and impractical (if not infeasible) standards, requirements, and definitions. Focuses almost exclusively on developer liability, creating untenable levels of liability for failing to foresee and block all conceivable uses of a model that might do "critical harm" even if a third party jailbreaks the model, with devastating downstream impacts on the AI ecosystem and deterring open-source development. Further imposes unreasonable and invasive "know your customer" requirements on operators of computing clusters and requires them to implement a "kill switch" to enact a full shutdown

in the event of an emergency. Ultimately will undermine economic technological innovation without improving safety standards in any way.

- **Job Killer: SB 399 (Wahab; D-Hayward):** An overly broad bill regarding employer speech that will effectively chill any discussions related to legislation, regulations, or other "political matters" and is both preempted by the National Labor Relations Act and violates the First Amendment.

- **AB 1008 (Bauer-Kahan; D-Orinda):** Seeks to amend the California Consumer Privacy Act (CCPA) to clarify the formats in which personal information (PI) can exist, but instead increases confusion by inaccurately describing those formats and misleading consumers and businesses as to how existing law operates and how AI systems and large language models store personal data. Not only do clarifications mandate accuracy, which is lacking from AB 1008, but the CCPA is already widely acknowledged to be a technology-neutral, industry-neutral and comprehensive data privacy law where protections do not hinge on how the data is collected, the format in which it exists, is transmitted, or stored unless it is exempted, deidentified, or aggregate consumer information.

- **AB 3048 (Lowenthal; D-Long Beach):** Prematurely mandates browsers to include a universal opt-out preference signal, an issue specifically addressed by voters in Proposition 24 in 2020 and has been clearly drafted to provide businesses greater flexibility. Effective January 1, 2026, prohibits businesses from developing or maintaining a browser that does not include a setting that enables consumers to send an "opt-out preference signal" (opting out from the selling or sharing of the consumer's PI or limiting the use of their sensitive PI) to other businesses that

the consumer interacts with through the browser, "unless prohibited by federal law." Also applies the prohibition to businesses developing or maintaining a mobile operating system that does not include such a setting if it becomes operative within 6 months after California Privacy Protection Agency regulations are issued. Invariably will lead to significant confusion and compliance problems as downstream businesses receive conflicting signals, and even more complicated as states adopt different standards for these signals.

- **AB 3129 (Wood; D-Santa Rosa):** Requires private investors to obtain the consent of the California Attorney General before acquiring or effecting a change of control with respect to certain health care entities.

- **AB 3233 (Addis; D-Morro Bay):** Seeks to circumvent recent California Supreme Court case law and Section 3106 of the Public Resources Code (PRC), and replace the comprehensive, longstanding state law with a patchwork of local ordinances that may ban or add unfeasible limits to oil and gas exploration, production and abandonment work. This bill has the potential to open local governments to significant legal liability under the takings clause of the U.S. Constitution. If local governments enact an ordinance that prohibits oil production, there are increased projected potential local government costs of \$27 billion.

- **SB 1299 (Cortese; D-San Jose):** Creates workers' compensation presumption that would require the Workers' Compensation Appeals Board (WCAB) to adjudicate agriculture Cal/OSHA claims and impose a presumption regardless of any causal link between the alleged occupational injury and a violation of any provision of heat-related standards.

CalChamber-Sponsored Seminars/Trade Shows

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Professional Association of Exporters and Importers. September 24–25, Milpitas. (408) 532-8234.
Encryption Controls. Bureau of Industry and Security, Professional Association of Exporters and Importers. September 26, Milpitas. (408) 532-8234.
2024 California Pavilion @ Industrial

Transformation Mexico. GO-Biz. October 8–11, Leon, Guanajuato, Mexico. Diana.Dominguez@gobiz.ca.gov.
Japan International Aerospace Exhibition: California Pavilion. GO-Biz. October 16–18, Tokyo, Japan. emily.desai@gobiz.ca.gov.
Africa Health. GO-Biz awarding export vouchers. October 22–24, Cape Town,

South Africa. patricia.utterback@gobiz.ca.gov.
Cosmoprof Hong Kong. GO-Biz. [Registration of interest required](#). November 12–14, Hong Kong, China.
Rebuild Ukraine 2024: Business in Ukraine and Poland. GO-Biz. November 12–15, Warsaw, Poland. patricia.utterback@gobiz.ca.gov.

CalChamber PAGA Wage & Hour Compliance Toolkit Available Now



CalChamber's **PAGA Wage and Hour Compliance Toolkit** is

now available for immediate download, offering businesses critical support to comply with the latest Private Attorneys General Act (PAGA) reform measures.

Since it was enacted in 2004, PAGA has allowed individuals to file lawsuits seeking Labor Code violation penalties for not only themselves, but also all other aggrieved employees. This has resulted in a substantial increase in litigation that costs businesses of all sizes billions of dollars while bringing little benefit to workers.

On July 1, 2024, Governor Gavin Newsom signed into law two PAGA reform measures that, together, will curtail rampant PAGA lawsuit abuse while significantly reducing potential penalties that are attached to such claims by allowing employers to take reasonable steps toward wage and hour compliance.

This PAGA Wage and Hour Compliance Toolkit, which contains more than 60 digital and physical resources, is designed to assist employers in meeting their wage and hour requirements under the California Labor Code and applicable wage orders.

Webinars

Those who purchase this toolkit will receive on-demand recordings to the following webinars:

- PAGA Reform: What to Know and Do to Protect Your Organization.
- Wage and Hour Essentials: Laws for Nonexempt Employees.
- Wage and Hour Essentials: Exempt Employee Requirements.

Customers who have already purchased any of the above webinars and would like to purchase the entire PAGA Wage and Hour Compliance Toolkit, please contact Customer Service at (800) 331-8877.

Policies

The toolkit also contains **16 wage and hour policies** in English and Spanish:

1. Wage and Hour Training
2. Final Pay
3. On Call/Standby
4. Split Shift
5. Pay Differentials
6. Reporting Time Pay
7. Makeup Time
8. Meal and Rest Periods
9. Overtime for Nonexempt Employees
10. Pay for Mandatory Meetings/ Training
11. Timekeeping and Off-the-Clock Work
12. Lactation Accommodation

13. Expense Reimbursement
14. Payment of Wages
15. Sick Leave
16. Personnel and Payroll Records

Forms

Also included in the toolkit are **more than 40 wage-and-hour-related forms (English and Spanish)** that include a **payroll audit checklist** and address various additional topics, including:

- Meal breaks;
- Makeup time;
- Overtime;
- Alternative workweek;
- Final pay;
- Payroll and personnel records requests; and
- Much more.

Posters

Plus, customers will receive the following to display at their worksite in a conspicuous location in accordance with California law:

- A **Wage Order poster** of their choice; and
- One California and Federal Labor Poster.

To order, visit the [CalChamber Store](#). Special price for CalChamber members: \$300. Call customer service at (800) 331-8877 for your exclusive discount.



Supervisor Essentials: Workplace Compliance Seminar

\$249

 Live Webinar - September 26, 2024

 9:00 AM - 12:30 PM PT