

# Government Employers Held Liable for Limited PAGA Penalties by California Court of Appeal

*Court allows penalties for public employees per state's Private Attorneys General Act but only where code provides for a monetary penalty. by Candice Pillion*

TUSTIN, CALIFORNIA, UNITED STATES, April 16, 2021 /EINPresswire.com/ -- In a newly-published decision by the California Court of Appeals, First District, the Court of Appeals has resolved a longstanding question of whether California public entities are subject to claims filed under the California Labor Code's Private Attorneys General Act, or "PAGA." The Court of Appeals also clarified which forms of PAGA penalties are available to public employees who have succeeded in a PAGA claim filed against public employers. This decision both expands PAGA liability by clarifying that public employers may be held liable under PAGA and limits this liability to only one of two potential forms of penalties against these

“

...constructive discharge occurs when an employer effectively forces the employee to resign or retire.”

*Jon McGrath, Southern California Employment Law Attorney*

employers.

PAGA penalties: statutorily-designated and “default”

The Private Attorneys General Act of 2004, California Labor Code § 2698 et seq., allows California employees to stand in the shoes of the government in seeking penalties previously only available to the state's labor law enforcement offices. PAGA allows for the recovery of penalties under dozens of different sections of the Labor Code. Certain of these code sections specify the amount of the available penalty for initial or repeat violations, but others do not. Where no penalty amount is specified in the code section, aggrieved employees are entitled to recover so-called “default PAGA penalties” as established in PAGA itself. For example, for aggrieved workers seeking penalties for violations of California's overtime laws, Labor Code § 558 provides for penalties of \$50 for each underpaid worker for an initial violation and \$100 for subsequent violations per pay period. If aggrieved workers are seeking PAGA penalties for violations of Cal/OSHA's regulations on worker health and safety, they are eligible instead to recover PAGA's default penalties of \$100 for an initial violation per worker and \$200 per subsequent violation, since PAGA-eligible Cal/OSHA regulations do not include penalties.

## CSU worker sought PAGA penalties after constructive discharge

The recently published case titled *Sargent v. Board of Trustees of CSU* centered on the claims filed by a longtime health and safety technician for Sonoma State University named Thomas Sargent. Mr. Sargent was put on a performance-improvement plan, received six written reprimands in the three months after reporting the presence of hazardous waste on campus, and was repeatedly suspended from work after raising concerns about the presence of asbestos on campus. After several years of escalating negative consequences resulting from Sargent testing for and reporting the presence of lead and asbestos on campus, Sargent found himself unable to sleep, “frazzled,” and unable to “take it anymore,” and submitted his resignation, believing that his termination would have occurred soon if he had not quit.

Sargent filed suit in 2014, ultimately seeking damages both for his individual claims, including whistleblower retaliation and constructive termination, along with PAGA penalties on behalf of all aggrieved employees at Sonoma State for violations of Labor Code § 232.5 (barring employers from prohibiting employees to discuss working conditions as a condition of employment) as well as Cal/OSHA regulations and statutes. As [Jon McGrath, attorney at the Southern California employment law firm Coast](#) Employment Law explains, California’s Labor Code section 1102.5 broadly protects whistleblowers from retaliation for complaining about actual unlawful conduct as well as situations where an employee has “reasonable cause” to believe that unlawful conduct occurred.

Regarding Sargent’s claim for constructive discharge, attorney McGrath explains, “constructive discharge occurs when an employer effectively forces the employee to resign or retire.” Mr. McGrath describes that the standard for constructive discharge was established by the California Supreme Court in the 1994 case of *Turner v. Anheuser-Busch, Inc.* This precedent requires that the employer intentionally or knowingly permitted working conditions that were so intolerable that a reasonable person in the employee’s position would be compelled to resign, and a reasonable employer would realize this. The court in *Turner* stated that to establish an “intolerable” working condition, an employee must show working conditions that are unusually aggravated or working conditions that amount to a continuous pattern of objectionable conduct. According to Mr. McGrath, this conduct could include “badgering, harassing or humiliating an employee in an attempt to encourage an employee to quit.”

In 2017, a jury reinstated Sargent and awarded him back pay, and also found CSU liable for nearly \$3 million in PAGA penalties, most of which consisted of “default” PAGA penalties rather than ones established by individual Labor Code statutes. Sargent was also awarded \$7.8 million in attorneys’ fees, which included a 2.0 multiplier.

On appeal, CSU succeeded in having some, but not all, of Sargent’s award reversed. Most significantly, the Court of Appeal upheld the trial jury’s finding that public entities such as CSU are not exempt from lawsuits filed under PAGA, but only for the recovery of penalties for code

violations that themselves provide for penalties. The Court of Appeals, clarifying what had long been a grey area in California law, explained that “any employer that is subject to a civil penalty assessed and collected by the Labor Agency is subject to PAGA.” In the portion of PAGA addressing violations for which a civil penalty is not specifically provided, the Act defines the sort of “persons” who can be held liable under that section in such a way that would not include public entities. Based on this holding, the Court of Appeal reversed the trial jury’s award of PAGA penalties to Sargent but upheld the award of reinstatement, back wages, and attorneys’ fees.

Jon McGrath

Coast Employment Law

+1 714-551-9930

[email us here](#)

Visit us on social media:

[Facebook](#)

---

This press release can be viewed online at: <https://www.einpresswire.com/article/538697451>

EIN Presswire's priority is source transparency. We do not allow opaque clients, and our editors try to be careful about weeding out false and misleading content. As a user, if you see something we have missed, please do bring it to our attention. Your help is welcome. EIN Presswire, Everyone's Internet News Presswire™, tries to define some of the boundaries that are reasonable in today's world. Please see our Editorial Guidelines for more information.

© 1995-2021 IPD Group, Inc. All Right Reserved.