

Ogletree Deakins

EMPLOYMENT LAW BRIEFING

presented by Ogletree Deakins' SAN DIEGO OFFICE

## California Legislative Update

Presenter  
Chris Olmsted (San Diego)



1

---

---

---

---

---

---


---

---

### Minimum Wage

- 2025 California minimum wage: **\$16.50**
- Several local ordinances also increase
- Minimum California exempt salary: **\$68,640**

**Next Steps:** Update minimum wage posters; audit salary levels for exempt employees.



Ogletree Deakins

2

---

---

---

---

---


---

---

---

### Fast Food and Health Care Minimum Wage

- Fast Food Workers 2025: TBD, possibly \$20.60
- Health Care Workers: Increases effective October 16, 2024, ranging from \$18 to \$23.



Ogletree Deakins

3

---

---

---

---

---

---

---

---

### PAGA Reform

- California legislature introduced two bills, AB 2288 and SB 92.
- Governor signed the law, and it is effective July 1, 2024



Ogletree  
Deakins

4

---

---

---

---

---

---

---

---

### PAGA Reform

#### What is PAGA?

- This allows plaintiffs—and their for-profit attorneys—to seek millions in civil penalties for violations of the Labor Code & Wage Orders.
- These “civil penalties”, which have a one-year statute of limitations, are assessed in addition to statutory damages.
- For example, a plaintiff might seek \$10 or \$20 in unpaid wages during a pay period, but also seek \$100 in PAGA penalties for the same violation.

Ogletree  
Deakins

5

---

---

---

---

---

---

---

---

### PAGA Reform

#### How is PAGA a problem?

- Easy to file / allege violations.
- No arbitration.
- No class certification procedure
- Suing employee can pursue penalties even if not directly harmed by a violation.



Ogletree  
Deakins

6

---

---

---

---

---

---

---

---

## PAGA Reform

### Is the new law good?

- Effective for claims filed on or after 6/19/24
- Only employees who actually suffered a violation, which occurred in the past year, can sue.
- Employers have the right to cure certain violations to avoid or reduce penalties.
- Courts empowered to manage or limit claims in lawsuit to prevent runaway claims.



Ogletree  
Deakins

7

---

---

---

---

---

---

---

---

## PAGA Reform

### What are the changes?

- Penalties capped at 15% for employers who take “all reasonable steps to be in compliance *before* the employer receives a notice of violation or request for wage records.
- “Reasonable steps” include:
  - Periodic payroll audits with corrections
  - Compliant written wage-hour policies
  - Wage hour training for supervisors
  - Disciplining supervisors who violate the Labor Code



Ogletree  
Deakins

8

---

---

---

---

---

---

---

---

## PAGA Reform

### What are the changes?

- Penalties capped at 30% for employers who take “all reasonable steps to be in compliance within 60 days after receiving a notice of violation.



- **Key:** Limited time to act after receipt of notice!

Ogletree  
Deakins

9

---

---

---

---

---

---

---

---

## PAGA Reform

### What are the changes?

- Reduced penalties for technical wage statement violations.
  - Reduced from \$100 per employee, per pay period to \$25.
  - Applies only if the employee could easily determine from the wage statement alone the required information (hourly rate of pay, hours worked, etc.)



Ogletree  
Deakins

10

---

---

---

---

---

---

---

---

## PAGA Reform

### What are the changes?

- Reduced penalties for isolated errors
  - Violations that occurred over less than 30 consecutive days or 4 consecutive pay periods, the \$100 penalty is reduced to \$50.



Ogletree  
Deakins

11

---

---

---

---

---

---

---

---

## PAGA Reform

### What are the changes?

- Prevents “stacking” of penalties
  - E.g. meal period violation cannot also lead to penalty for failure to pay all wages due at termination and failure to provide a compliant wage statement.



Ogletree  
Deakins

12

---

---

---

---

---

---

---

---

PAGA Reform

What are the changes?

- Avoids unfair penalty for weekly payroll
  - Penalty awards cut in half for employers with weekly payroll.
  - Previously: the per employee, per pay period penalty structure unfairly doubled the penalties for employers with weekly payroll.



Ogletree Deakins

13

---

---

---

---

---

---

---

---

PAGA Reform

What are the changes?

- Additional cure rights starting 10/1/24
  - Small employers (100 or fewer employees) can send a cure plan to the labor agency within 33 days or receipt of notice, before a lawsuit is filed. If agency agrees, no lawsuit.
  - After a lawsuit is filed, employer of any size can request a stay of proceedings while the employer proposes a cure plan. (May include back wages, interest, liquidated damages, attorney fees and costs.)

Ogletree Deakins

14

---

---

---

---

---

---

---

---

PAGA Reform

What should I do?

- Prevention/compliance matters more than ever!
- Get HR/legal help to ensure that you comply with California wage and hour laws.
- Common issues:
  - Meal and rest breaks
  - OT and OT rates
  - Recording all hours worked
  - Proper pay stubs
  - Proper "regular rate of pay" calculations (OT, meal, sick)

Ogletree Deakins

15

---

---

---

---

---

---

---

---

### SB 399 – Captive Audience Meetings

- Limits an employers ability to communicate with employees regarding political or religious matters during mandatory meetings.
- “Political” includes union organizing.
- Possibly unconstitutional.

**Next Steps:** Refrain from mandatory meetings on such topics.



Ogletree  
Deakins

16

---

---

---

---

---

---

---

---

### SB 1100 –Driver’s Licenses

- Unlawful employment practice to include a statement that an applicant must have a driver’s license
- Exceptions:
  - (1) job requires driving; and
  - (2) alternative form of transportation would not be comparable in travel time or cost to the employer.

**Next Steps:** Update hiring forms and procedures.



Ogletree  
Deakins

17

---

---

---

---

---

---

---

---

### AB 1870 – Updated Workers Compensation Poster

Requires workplace poster to notify employees of their right to consult a licensed attorney to advise them of their rights.

Effective 1/1/25

**Next Steps:** Hang new poster.



Ogletree  
Deakins

18

---

---

---

---

---

---

---

---

### AB 2123 – Paid Family Leave

- Eliminates employer’s ability to require employees to use accrued vacation before accessing Paid Family Leave.
  - Previously could require use of 2 weeks



**Next Steps:** Update PFL policy.

Ogletree  
Deakins

19

---

---

---

---

---

---

---

---

### AB 2499 – Victims of Crime Leave

- Expands list of crimes employees can take time off for.
- Allows use of paid sick leave.
- Eliminates 25 employee threshold
- Mandates written notice to all new hires, annually to all employees, and when known employee or family member is a victim.



**Next Steps:** Update crime victim leave policy and sick pay policy; look for new government brochure.

Ogletree  
Deakins

20

---

---

---

---

---

---

---

---

### SB 1137 – Intersectionality Discrimination

- FEHA clarified to prohibit discrimination on the basis of intersectionality (combination) of two or more protected traits.
- Legislature affirms the decision of the Ninth Circuit Court of Appeals in *Lam v. University of Hawai'i* (9th Cir. 1994)



**Next Steps:** Update anti-discrimination and harassment policies: “any combination of those characteristics.”

Ogletree  
Deakins

21

---

---

---

---

---

---

---

---

### SB 988 – Freelance Worker Protection Act

- Applies to **freelance workers** hired as bona fide independent contractors
- All contracts for a freelance worker’s services **in excess of \$250.00** must be in **writing**
- Freelance worker’s must be **paid no later than 30 days** after they complete services
- Hiring party must retain the written contract for 4 years
- Hiring party cannot discriminate against the freelance worker for protesting violations of the Act/seeking to enforce it.



Ogletree Deakins

22

---

---

---

---

---

---

---

---

### AB 1976 – Narcan in the Workplace

- Requires Cal/OSHA to draft a rule requiring employers to include Narcan in first aid kits.
- Shields those offering aid from liability.

**Next Steps:** Stand by for published rule.



Ogletree Deakins

23

---

---

---

---

---

---

---

---

### Miscellaneous

Bill No.	Topic
SB 1089	Pharmacy and grocery closures
SB 1299	Farmworkers / workers' compensation
SB 1340	Local enforcement of discrimination laws
SB 1350	Cal/OSHA regulation of household workers
AB 2011	CFRA small employer mediation program
AB 2975	Cal/OSHA hospitals – weapons
AB 2738	Labor Code – attorney fees
AB 2754	Joint liability – port drayage
AB 3234	Social compliance audits



Ogletree Deakins

24

---

---

---

---

---

---

---

---



## Heat Illness Prevention in Indoor Places of Employment

As of July 23, 2024, employers must have certain safety measures in place for indoor workplaces reaching 82°F to prevent worker exposure to heat illness, including:

- Providing fresh, suitably cool, free water
- Providing cool-down areas maintained below 82°F and shielded from other high-radiant heat sources
- Training supervisors to monitor for symptoms of heat-related illness
- Closely observing new workers working in hot areas during a 14-day acclimatization period, as well as all workers working during a heat wave



Ogletree  
Deakins

25

---

---

---

---

---

---

---

---

## Workplace Violence Prevention Program (WVPP)

- **Non-Active Procedures**
  - Assessing workplace violence risks
  - Create and distribute a written plan.
  - Implementing strategies to reduce workplace violence risks (physical and procedures)
  - Annual training
  - Investigating incidents and concerns
  - Violent Incident Log
  - Multi-Employer Worksites coordination
- **Active Procedures**
  - Alerts
  - Evacuation or sheltering
  - How to obtain help during emergency

Ogletree  
Deakins

26

---

---

---

---

---

---

---

---

## Expansion of Workplace Violence Temporary Restraining Order

- Existing California law enables employers to seek a temporary restraining order against an individual who has engaged in workplace **violence or threats of violence** against employees.
- Effective January 1, 2025, California law will also allow employers to seek a temporary restraining order against an individual who has **harassed** their employees.

Ogletree  
Deakins

27

---

---

---

---

---

---

---

---

## Harassment / Retaliation

### **Bailey v. San Francisco Dist. Atty's Office** (Cal Supreme Ct 2024)

- Co-worker used N-word racial slur.
- HR refused to accept her complaint, but ultimately employer responded.
- Supreme Court: One-time use of racial slur may be actionable if sufficiently severe.
- Also: HR's initial response relevant to employer's potential liability.



Ogletree  
Deakins

28

---

---

---

---

---

---

---

---

## Harassment – Social Media

### **Okonowsky v. Garland** (9th Cir 2024)

- Female staff psychologist at prison subjected to sexually offensive comments from male corrections officer, including on Instagram.
- Court: employer may be held liable for non-work-related social media when causes consequence at work / hostile work environment.
- Consistent with recent EEOC *Enforcement Guidance on Workplace Harassment*



Ogletree  
Deakins

29

---

---

---

---

---

---

---

---

## Disability Accommodation

### **Miller v. Dept. of Corrections**

(Cal. App. 2024)

- Correctional officer injured on job.
- Placed on LOA.
- Offered to “medically demote” her to job she could perform; she declined.
- New claim: mental disability prevented her from working.
- Court: MSJ granted / upheld. No accommodation would have allowed employee to work.



Ogletree  
Deakins

30

---

---

---

---

---

---

---

---

## FMLA

### **Perez v. Barrick Goldstrike Mines, Inc.** (9<sup>th</sup> Cir 2024)

- Truck driver claims injured driving in mine.
- Off work 16 days
- Investigation concluded he was faking it, took time off to fix his rental properties. Fired.
- Jury: No liability.
- Ninth Circuit: Second medical opinion unnecessary; jury permitted to consider non-medical evidence that Perez didn't have a "serious health condition."



Ogletree  
Deakins

31

---

---

---

---

---

---

---

---

## Arbitration

### **Doe v. Second Street Corp.** (Cal 2024 - unpublished)

- Federal EFAA (2022) rendered arbitration agreements unenforceable in sexual harassment cases.
- **Q:** Does mean that no arbitration for whole lawsuit, or just the harassment claim?
- **A:** The whole case escapes arbitration.



Ogletree  
Deakins

32

---

---

---

---

---

---

---

---

## Frivolous Lawsuits?

**Q:** A former employee filed a frivolous discrimination lawsuit against my company. Can we sue him to recover fees and costs?

**A:** Probably not. Lawsuit must be "objectively frivolous."



- *Neeble-Diamond v. Hotel California By The Sea, LLC*

Ogletree  
Deakins

33

---

---

---

---

---

---

---

---

**Thank you!**

Questions and Discussion

Christopher.Olmsted@Ogletree.com



34

---

---

---

---

---

---

---

---

**About the Firm**

Ogletree Deakins is one of the largest labor and employment law firms representing management in all types of employment-related legal matters.

The firm has more than 900 attorneys located in 54 offices across the United States and in Europe, Canada, and Mexico.

We represent a diverse range of clients, from small businesses to Fortune 50 companies.



35

---

---

---

---

---

---

---

---

**Our 54 Offices**

Atlanta	Greenville	Morristown	Richmond
Austin	Houston	Nashville	Sacramento
Berlin	Indianapolis	New Orleans	San Antonio
Birmingham	Jackson	New York City	San Diego
Boston	Kansas City	Oklahoma City	San Francisco
Charlotte	Las Vegas	Orange County	Seattle
Chicago	London	Paris	St. Louis
Cleveland	Los Angeles	Philadelphia	St. Thomas
Columbia	Memphis	Phoenix	Stamford
Dallas	Mexico City	Pittsburgh	Tampa
Denver	Miami	Portland (ME)	Toronto
Detroit (Metro)	Milwaukee	Portland (OR)	Torrance
Montreal	Montreal	Raleigh	Tucson
			Washington, D.C.



36

---

---

---

---

---

---

---

---

## Disclaimer

*These materials have been prepared by the lawyers of Ogletree Deakins to inform our clients of important information in these areas of law. They are not, of course, intended as specific legal advice, but rather are offered to alert our clients to important developments and potential problems that may affect their business operations. When clients are faced with actual or potential business problems relating to these areas, they are encouraged to seek specific legal counsel by contacting the lawyers in our firm with whom they normally work.*

*Any reproduction in any form or incorporation into any information retrieval system or any use without the express written consent of Ogletree Deakins is prohibited.*

Ogletree  
Deakins

---

---

---

---

---

---

---

---