

Heightened PAGA Penalties Are Inapplicable For Most Wage Statement Claims

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Christmas came early this year for California employers. Bucking the trend of unrelentingly bad news for employers in the state, the California Court of Appeal has held that the default (lower) penalties found in the Labor Code Private Attorneys General Act (“PAGA”) and not the heightened penalties set forth in [Labor Code section 226.3](#) (“Section 226.3”) apply to a run-of-the-mill PAGA claim involving allegedly incomplete or inaccurate wage statements. In so ruling, the court in [Gunther v. Alaska Airlines, Inc.](#) expressly declined to follow an earlier decision by another panel of the same court in [Raines v. Coastal Pacific Food Distributors](#), 23 Cal. App. 5th 667 (2018). This conflict between the panels now sets the table for intervention by the California Supreme Court, which will have to decide which court got it right.

In *Gunther*, the trial court found Alaska Airlines liable for approximately \$25 million in PAGA penalties stemming from wage statements that allegedly failed to contain all of the information required under Labor Code section 226(a) (“Section 226(a)”). Relying on *Raines*, the trial court held that the proper measure of PAGA penalties for *any* violation of Section 226(a) is set forth in Section 226.3, which provides, in relevant part: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty ... of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

However, the appellate court in *Gunther* held that “[u]nder the plain meaning of the[] words [in Section 226.3], the heightened penalties under [S]ection 226.3 apply only where the employer either fails to provide a wage statement or fails to keep required records as required by [S]ection 226(a).” Accordingly, because it was undisputed that Alaska Airlines had provided wage statements (albeit allegedly noncompliant ones) to the “aggrieved employees” at-issue, the court reversed the trial court’s imposition of the heightened PAGA penalties based on Section 226.3 and held that any deficiencies in the wage statements would trigger only the “default” PAGA penalties of \$100 per employee per pay period and, if a court or the Labor Commissioner previously notified Alaska Airlines of violations, \$200 for subsequent violations.

As most employers who have faced such PAGA claims know, it is often the case that wage statement violations and their related penalties represent a substantial component of alleged liability in PAGA actions. Accordingly, *Gunther* should provide valuable assistance to employers in keeping settlements reasonable in the face of absurdly inflated plaintiffs’ demands based on mere technical violations of Section 226(a).

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