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Showdown at the Ballot Box – Business and Labor Load Up on Ammunition for PAGA Brawl

California Employment Law Update on **February 20, 2024**

All eyes will be on the United States this November as Americans head to the polls in the upcoming 2024 general election. Likely to go somewhat less noticed among the Presidential, Senate, and House races this year is a California ballot initiative that would repeal (after 20 long years!) the Labor Code Private Attorneys General Act of 2004—better known as PAGA. (We previously reported in more depth on this initiative here.)

While many Californians have never heard of the law, it has played a significant role in reshaping the landscape of employment litigation across the state (and has been a frequent subject of this blog). PAGA essentially permits individual "aggrieved" employees (in actuality, their lawyers) to be deputized as "private attorneys general" to prosecute litigation to enforce every jot and tittle of the California Labor Code regardless of whether any individual employee has suffered any damage or harm. Famously, the lawyers tend to do better in these cases than do their clients or the state (on whose behalf they are ostensibly acting), which has caused us to more accurately spell out the acronym as the "**Prettymuch All Goes to the Attorneys**" statute.

Both supporters and opponents of the ballot initiative are gearing up for a fight, which as usual arrays business interests on one side against the trial lawyers and labor unions on the other. This being the law, the weapons of choice are not six-shooters but rather dueling expert reports, which may not be quite as flashy but pack almost as much of a punch.

The initiative's supporters argue that employees benefit more when actions are brought directly by the state (instead of by trial lawyers whose share is at least a third of the overall recovery) and that PAGA has resulted in needlessly high litigation and settlement costs for employers for two decades now. Specifically:

- Workers receive *three times more compensation* when their claims are processed by the state than when a trial lawyer prosecutes the action in court;
- *Employers pay less in fees and costs* when the state prosecutes the action instead of a trial lawyer; and
- Cases filed in court take nearly 12 months longer to be resolved than those filed with the state directly.

In short, the reform offered by the initiative will result in all parties and the state ending up better off – with the exception of the trial lawyers who can be expected to pull out all the stops to prevent this initiative from passing. California voters ultimately will decide PAGA's fate in November. Whatever the outcome, we will continue to monitor for any PAGA updates, as well as other ballot initiatives that will impact California employers.

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