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Labor and Employment Alert: A Small But Meaningful Change to California's Private Attorneys General Act for Employers

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On October 2, 2015, California enacted AB 1506 to amend its Private Attorneys General Act (commonly referred to as PAGA) to address the increase in class action litigation over minor, technical violations of itemized wage statements. PAGA authorizes an "aggrieved" employee to bring a class or representative action to recover civil penalties for violations of the California Labor Code (\$100 for each initial violation and \$200 for each subsequent violation for each employee). Plaintiffs in class actions use the threat of these penalties to dramatically increase a company's potential exposure in the hopes of leveraging settlement. One source of exposure has involved itemized wage statements.

Under the Labor Code section 226, an employer must provide its employees with an itemized wage statement (a pay stub) that contains, among other things, the inclusive dates of the pay period and the name and address of the legal entity that is the employer. These technical requirements have been the source of several class actions. Indeed, AB 1506's legislative history notes the "frivolous litigation regarding technical violations that do not harm or injure the employee" as a reason for its enactment.

The PAGA amendment provides that an employer has 33 days in which to cure a violation involving the inclusive pay dates or employer identity before an employee may bring an action under PAGA. However, the violation is only deemed cured after the employer has provided a fully compliant, itemized wage statement for each pay period to each aggrieved employee for the past three years. Moreover, an employer's right to cure those violations is limited to once in a 12-month period.

These changes to PAGA are effective immediately. Contact your Vorys lawyer if you have questions about PAGA or best practices for ensuring your company is complying with the California Labor Code's highly technical provisions.