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Too Little Too Late: AB 2288 Which Seeks to Add Injunctive Relief to PAGA Passes the Assembly Floor

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Earlier this week, a bill seeking to amend the Private Attorneys General Act (PAGA) to allow courts to grant injunctive relief passed the Assembly Floor and is headed to the Senate. If AB 2288 passes the Senate to become law, both the state agency and employees authorized to file PAGA lawsuits will be able to seek injunctive relief – i.e. a court order requiring an employer to change their employment practices – in addition to civil penalties and attorney’s fees and costs that are currently recoverable under PAGA.

The practical effect of the proposed changes is likely to be minimal. AB 2288 would permit, but not require, plaintiff’s lawyers to seek injunctive relief in PAGA cases. Injunctive relief is considered an extraordinary remedy and courts are often reluctant to issue injunctions. Generally, to obtain injunctive

relief, a plaintiff must show a likelihood of irreparable harm if the injunction is not entered and that money damage remedies are inadequate. These are difficult hurdles to establish. As a result, injunctive relief is unlikely to result in significant practical changes to PAGA.

If AB 2288 is unlikely to have a meaningful impact on PAGA litigation, why is the bill being pushed forward? This bill was likely proposed to stake a negotiation position and change the conversation about potential PAGA reforms.

PAGA – a bounty hunter statute – has increasingly come under attack as doing little to protect or compensate employees while the bounty hunter plaintiff’s lawyers typically receive 30-40% of the gross settlement amount in attorney’s fees. After certain other administrative off-the-top costs, 75% of the net settlement amount is allocated to the Labor Workforce Development Agency (the state agency charged with enforcing labor laws). The remaining 25% of the net settlement amount is divided among the affected employees.

California voters may soon be considering whether to reform PAGA. The Fair Pay and Employer Accountability Act has qualified as a ballot measure on the November 2024 ballot. Under that ballot initiative, a worker’s labor claims would be handled by the Labor Commissioner (rather than by private attorneys), require state funding for Labor Commissioner enforcement, require the Labor Commissioner to provide pre-enforcement advice, provide employers with an opportunity to correct identified labor-law violations without penalties, award all penalties to employees, and authorize increased penalties for willful violations.

There are ongoing negotiations between legislators, proponents, and opponents of the Fair Pay and Employer Accountability Act about changes to PAGA. If those negotiations are fruitful, that may result in a new bill changing PAGA before the November election, which would moot the ballot measure. AB 2288 seeks to blunt the criticism that PAGA does little to protect employees and stake a position against the Fair Pay and Employer Accountability Act.

Undoubtedly, changes to PAGA are on the horizon. CDF is continuing to monitor PAGA developments, so stay tuned for additional updates.