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### California Court of Appeal Opens New Pathway for Private Attorneys General Act Claims



Recently, a California court of appeal held that employees can pursue Private Attorneys General Act (PAGA) claims for violations of California's Healthy Workplaces, Healthy Families Act of 2014 (HWHF) (Labor Code § 245 et seq.) The HWHF generally requires employers provide eligible employees at least three paid sick days per year. Enforcement of this requirement is the responsibility of the labor commissioner and attorney general, and employers who do not comply may be subject to compensatory and liquid damages. They also may incur civil penalties under section 248.5. Section 248.5(e), which states "*any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief . . .*" (emphasis added). The interpretation of the italicized language became the core of the dispute in this recent case.

The employee argued the employer failed to pay employees for sick leave time and denied employees the right to use sick leave. The employer refuted these claims and argued the language in section 248.5(e) meant the legislature intended to preclude the use of PAGA for violation of HWHF and thus restricted employees to civil penalties. The employee argued this provision referred to the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.), and not PAGA.

Siding with the employee, the court of appeal reviewed the legislative history for HWHF to conclude that the legislature did not intend to preclude an aggrieved employee from bringing a PAGA action for violations of HWHF. Instead, according to the court of appeal, the reasonable construction of the "text, history, and context, [of] the phrase, 'on behalf of the public as provided for under applicable state law' refers to a UCL claim and not a PAGA action." In support of its interpretation, the court cited the legislature's inclusion of language elsewhere in Labor Code Section 245 that states the law does "not diminish, alter, or negate any other legal rights, remedies, or procedures available to an aggrieved person." The use of the phrase "aggrieved person" signaled to the court that the legislature did not intend to prohibit the use of PAGA for HWHF claims. This ruling opened the door to previously unavailable methods for employees to assert a private lawsuit under HWHF. California employers should consult with experienced counsel to ensure compliance with the requirements of HWHF.

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