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## **WINDOW OF OPPORTUNITY FOR EMPLOYERS: AB 1506**

by: Laura K. Sitar

A new bill just signed into law by Governor Brown gives California employers a small opportunity to cure technical violations in employee wage statements and avoid costly penalties and attorneys fees from a proliferation of frivolous lawsuits.

The Labor Code Private Attorney General Act or PAGA allows an employee to file a representative action for any violation of the California *Labor Code*. Statutory penalties for the violations range from \$100 per employee per pay period to \$200 per employee for each subsequent pay period the violation has occurred plus attorneys fees. Do the math. Penalties can easily soar into the six figures for employers with over one hundred employees and a significant number of employers in California have paid penalties and attorneys fees in the millions.

*Labor Code* § 226 requires accurate itemized pay statements showing:

- Gross wages earned,
- Total hours worked by the employee,
- The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece rate basis,
- All deductions, provided that all deductions made on written orders of the employee, may be aggregated and shown as one item,
- Net wages earned,
- Dates inclusive of the period for which the employee is paid,
- Name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- Name and address of the legal entity that is the employer, and
- Applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

AB 1506 will provide employers with 30 days to cure select missing information, specifically (6) missing inclusive dates of the period for which the employee is paid and (8) the names and address of the legal entity that is the employer. Before filing a civil action the employee must give written notice of the violation by certified mail to the Labor and Workforce Development Agency and the employer, including facts and theories to support the alleged violation. Employers should pay attention to any correspondence served by certified mail addressed to the Labor and Workforce Development Agency and the employer identifying *Labor Code* violations. The cure provisions require providing compliant wage statements to all employees for the past three years, which may sound onerous, but is certain to be less costly than the penalties and attorneys fees available if the violation is not cured.

Advice for all employers with California employees: Because violations are calculated by pay period, paying every two weeks or twice a month reduces potential penalties **for PAGA claims as well as several other Labor Code violations**. Check your employee wage statements. The information listed above must be on the wage statement itself. Information on the attached check doesn't count. Alert management who to notify is a notice to the Labor and Workforce Development Agency is received. And take action immediately. The opportunity to cure at least these particular violations can significantly reduce or eliminate penalties and litigation costs.

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**About the Author:**

A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation.

Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, \$100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, where she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California.

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