

**Senate Bill 646 (Hertzberg) Justice for Unionized Janitorial Workers  
Oppose**



July 8, 2021

TO: Members, Assembly Judiciary Committee

**SUBJECT: SB 646 (Hertzberg) Justice for Unionized Janitorial Workers**

The California Business & Industrial Alliance (CABIA), which represents hundreds of small and mid-sized businesses in California, strongly opposes Senate Bill 646, a bill that would exempt unionized janitorial service employers from the state's Private Attorneys General Act (PAGA).<sup>1</sup>

We are encouraged to see the Service Employees International Union (SEIU) acknowledge the harm PAGA can cause -- just as our state's construction unions acknowledged with regard to Assembly Bill 1654.<sup>2</sup> However, the solution is not -- as the SEIU and Senator Robert Hertzberg recommend with SB 646 -- to carve out an exemption to this misguided law for just one industry.<sup>3</sup> The entire law must be reformed or rescinded in order to equally protect all California industries from often disastrous and unwarranted legal action under PAGA.

PAGA is a harmful law that opens Golden State employers up to costly and often-frivolous legal attacks for even a minor or accidental violation of California's more than 1,100-page Labor Code. A March 2021 study by Len Baker and Christine Welsh—top Labor Department appointees under Governors Schwarzenegger and Brown—analyzed data from five years of PAGA lawsuits and found the outcomes are often suboptimal for employees.<sup>4</sup>

They found that employees actually recoup less money through PAGA court cases than through cases decided by the Labor and Workforce Development Agency (LWDA), mainly because trial attorneys receive exorbitant payouts from the former.

In fact, the current average payment a worker receives from a LWDA-decided case is 95 percent greater than for a PAGA case filed with a court: \$4,100 from an LWDA-decided case,

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB646](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB646)

<sup>2</sup> <https://norcalrecord.com/stories/605560855-newly-amended-legislation-seeks-to-exempt-unionized-janitorial-workers-from-paga>

<sup>3</sup> [https://www.cabia.org/app/uploads/FINAL\\_SB-646-Fact-Sheet\\_As-Amended-6.21.pdf](https://www.cabia.org/app/uploads/FINAL_SB-646-Fact-Sheet_As-Amended-6.21.pdf)

<sup>4</sup> <https://www.cabia.org/app/uploads/CABIA-PAGA-Study-Final.pdf>

versus \$2,100 from a PAGA court case. Meanwhile, employers typically pay out 60 percent less per award: On average, employers pay \$504,000 per LWDA-decided case and \$1,232,000 per PAGA court case. That's because attorneys are compensated with fees that represent 33 percent or more of the workers' total recovery in PAGA cases, coming to more than \$405,000 per case on average.

As evidenced by the data, trial attorneys are getting rich off of PAGA cases, while employers and employees are getting the short end of the stick. Some trial lawyers have found PAGA cases to be so lucrative, they even flaunt their prolific use of the law. That's the case with Daniel Gaines from Gaines & Gaines law -- a firm well-known for filing lawsuits under PAGA -- whose own Rolls Royce featured the license plate "MR PAGA."<sup>5</sup>

Meanwhile, PAGA has devastated countless small and medium-sized businesses by drowning them in legal fees and settlement payouts. Consider Blaine Eastcott, owner of an Orange County-based rock climbing company. As a former employee who valued a flexible work schedule, Blaine allowed his employees to take flexible breaks throughout their shifts. As a result, he was hit with a PAGA suit that threatens the future of his business and its 86 part-time employees.<sup>6</sup> A similar situation befell boutique hotel owners Lars and Kelly Viklund who were stunned to find they had been hit with a PAGA lawsuit after allowing their employees to skip clocking in and out for lunch. The suit cost them over \$200,000 in legal fees alone and has forced them to lay off staff and even sell one of their properties.<sup>7</sup>

The bill summary suggests that a collective bargaining agreement is all it takes to ensure employees are not taken advantage of by their employer.<sup>8</sup> But these agreements have failed to prevent numerous PAGA claims in the past. It stands to reason that employees can't simply rely on these agreements to ensure their protection; they need a new system.

Fixing PAGA does not mean giving bad employers license to break the law. Rather, it means properly funding and staffing the state's Labor and Workforce Development Agency to do its job, ensuring that wronged employees rather than trial lawyers are compensated after the law is broken. As Ms. Baker and Mr. Welsh point out in their report, funding reserves accessible by LWDA and the agencies under its authority exist in the amount of more than \$113 million. These funds could serve to finance the creation of an alternative administrative framework that could provide faster and better outcomes for employees.

PAGA is a problem for everyone, not just janitorial service employees. In order to achieve meaningful reform, we must oppose narrow fixes for PAGA based on favored industries or special interests, and instead prioritize an entire overhaul of the law.

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<sup>5</sup> <https://www.cabia.org/ca-lawyer-flaunts-mr-paga-license-plate/>

<sup>6</sup> <https://www.oregister.com/2019/04/13/in-orange-county-a-small-business-dream-becomes-a-nightmare/?fbclid=IwAR316PjNpOhtS-kUeoxOPvgNandacP1EH4ZdID5pbugdHwhGT9ernioYZ-M>

<sup>7</sup> [https://www.youtube.com/watch?v=6o\\_Frkz4wX0](https://www.youtube.com/watch?v=6o_Frkz4wX0)

<sup>8</sup> [https://www.cabia.org/app/uploads/FINAL\\_SB-646-Fact-Sheet\\_As-Amended-6.21.pdf](https://www.cabia.org/app/uploads/FINAL_SB-646-Fact-Sheet_As-Amended-6.21.pdf)

For these reasons we oppose **SB 646 (Hertzberg)**

Sincerely,

*Thomas Manzo*

Tom Manzo  
Founder  
CABIA