



## Abuse of *qui-tam* law

### The California experience

California is the only state that allows for *qui tam*-like actions for enforcement of labor standards and its experience demonstrates that this law is ripe for abuse. California's Private Attorneys General Act (PAGA) authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations.

The impact of California's law has been so severe, [certain unionized employers were subsequently exempted from the law to protect](#) them from "significant legal abuse... class action lawsuits over minor employment issues... [and] enormous pressure... to settle claims regardless of the validity of those claims."

In 2016, more than [5,000 PAGA complaints](#) were filed—an astonishing 1,440 percent increase from the law's first year in effect.

[According to state records](#), well over 100 law firms have sent 50 or more PAGA notices since the law was enacted. The top five most aggressive firms have filed over 500 cases each, with the top filer at 753 PAGA claims.

In a [2018 case](#), it was determined Uber misclassified employees. It cost the company \$7.8 million. Trial lawyers netted \$2.6 million, and each "harmed" employee received only \$1.08.

In a \$1 million [PAGA settlement with Google](#) in 2018, the attorneys received \$330,000 and each employee received \$15. The case involved employees who were hired to review sensitive adult content, who were asked to sign a waiver of liability for exposure to that content.

In October 2018, Walmart agreed to a [\\$65 million qui tam settlement](#) because its cashiers had not been provided with seats. The trial attorneys representing the employees received \$21 million, while affected employees received a check average of \$108 each.

In [Vicerel v. Mistras Group Inc.](#) a judge approved a \$6,000,000 settlement, of which only \$20,000 was allocated to the PAGA claim. The plaintiffs' attorneys were awarded \$2,000,000 (double the lodestar amount) and \$46,000 in costs.

The legislature's unfettered grant of authority to relators, without any oversight, has resulted in [qui tam actions targeting charities, non-profits](#) and other employers who provide valuable charitable services, including but not limited to, children's hospitals, AIDS centers, senior living centers and ambulance companies.

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Over

## **From the front lines: How *qui tam* hurts small employers**

by Anne Hackney, [Fox and Hounds 1/28/20](#)

*"In the case brought against our company, we were accused of denying workers timely meal breaks, otherwise known as the "five-hour rule." Our workers asked, collectively, if they could report to work at 6 a.m. instead of 7 a.m. so they could finish their day earlier, at 2:30 p.m. We allowed this flexibility for our workers. At this time, we asked them to move their lunch time to 10:30-11 a.m. However, they felt this was too early; they asked to take lunch later because they wouldn't be hungry at 10:30 a.m. They also stated that it would make the end of the day go by faster if they ate a little later. It was their choice. No one was injured and no one lost pay – there were no damages. It was as simple as that, a collective morale-boosting employee request, and we saw no harm in it. It meant, however, that the first shift took their lunch break more than 5 hours after they began work – in violation of the state's five-hour rule.*

*"Unfortunately, this flexible lunch was taken advantage of by a former employee who filed a lawsuit against our company, even though this former employee – who became the designated class representative – had never even worked that shift. The lawsuit was filed under the state's Private Attorney General Act. Commonly known as PAGA, it allows employees to act as a state regulator and bring legal action – often with costs and penalties against the company that are far, far higher than what a state regulator would normally seek.*

*"Not coincidentally, the employee's attorney on our case was the same one who had represented this employee's husband in a case against another manufacturer in our area. That same attorney also sued a large high-tech employer in California and countless other companies. Our small business was defenseless against this high-functioning lawsuit machine.*

*"Lawsuits hurt everyone, not just business owners. Being forced to pay exorbitant costs to attorneys can force businesses to cut jobs, bonuses and benefits in order to stay open in the face of huge settlements. We were one of those companies."*