August 2024 | **Volume 4** | Issue 8

NEWSALERT

Labor Violations

Newsom, Businesses Agree on PAGA Reforms

GOVERNOR GAVIN Newsom, legislators and business groups have struck an agreement to reform a law that has become a costly thorn in the side of employers operating in California, the Private Attorneys General Act.

The deal averts a showdown over a business-backed initiative slated to be on the November ballot that would repeal the law. The bill would keep the law intact while limiting frivolous litigation by allowing employers to make things right after a PAGA suit is filed.

PAGA allows workers who allege they have suffered labor violations, like unpaid overtime or being denied mandatory meal and rest breaks, to file suit against their employers rather than the typical route of filing a claim with the state Department of Labor Standards Enforcement.

The law essentially allows employees, represented by private attorneys, to stand in for the state and all their co-workers in suing their employer.

One reason workers pursue PAGA claims is the tremendous backlog that the DLSE faces, and they do so in the belief that the claim will be handled more quickly. However, a report by the Fix PAGA Coalition found that workers filing claims directly with the DLSE wait fewer than 10 months on average for their awards, compared to 23 months for PAGA court case awards.

Proceeds from settlements are split 25% with the employee who filed the case and the rest with the state, which collected more than $200 million in penalties in 2022.

The Fix PAGA Coalition's report found that non-profits, small businesses and other employers have paid out nearly $10 billion in PAGA case awards since 2013, with attorneys receiving the far bigger portion of the settlements.

Backers of the PAGA ballot initiative have withdrawn their measure in exchange for the legislation which was passed by June 27 and signed by Newsom the next day.

Agreement Highlights

Redefines 'standing' – It would require workers to personally experience the alleged violations brought in a claim.

Cure provisions – It would expand the list of Labor Code violations that can be cured before a PAGA action commences, which could allow employers to avoid lawsuits by making employees whole after receiving notice of alleged violations.

Limits claims – It would codify a court's ability to limit the scope of claims presented at trial to better manage the complaint.

Reforms penalty structure – It would cap penalties on employers that quickly fix policies and/or practices to make workers whole after they receive a notice of a PAGA action. It also caps penalties on employers that proactively comply with the Labor Code before receiving a PAGA notice.

See 'Package' on page 2

K Taylor Insurance Solutions

15068 Rosecrans Ave. Suite 114
La Mirada, California 90638

Phone: (562) 758-3482
E-mail: kpt@ktaylorinsurance.com
www.ktaylorinsurance.com

Fed-OSHA Rulemaking

OSHA Updates HazCom Standard

CHANGES ARE again coming to Fed-OSHA's Hazardous Communications Standard, which governs the handling of chemicals and other dangerous substances.

OSHA's final rule, which takes effect July 19, 2024, will bring the standard in line with the latest update to the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals.

The update revises criteria for the classification of certain health and physical hazards, as well as updating labeling requirements and safety data sheets (SDSs), among other changes.

Affected firms may have to update their HazCom program, and provide additional employee training for newly identified physical, health or other hazards.

It's important for employers to stay up to date on the HazCom standard to protect their workers. Labels and SDSs are often the first indication to a worker that they are handling a hazardous chemical, so it is imperative that they be as accurate and complete as possible.

Staggered Compliance Deadlines

First: Chemical manufacturers, importers or distributors evaluating substances will have to comply by Jan. 19, 2026, while those that evaluate mixtures will have to comply by July 19, 2027.

Second: Other employers will have to comply six months after those dates: July 19, 2026 for those that handle, store or use substances, and Jan. 19, 2028 for mixtures.

What the rule does

The new rule ensures that OSHA's HazCom standard jibes with the Global Harmonized System, which is used in most developed and many developing countries around the world.

It provides consistent definitions of hazards, specific criteria for labels, and a specific format for safety SDSs.

The new classification criteria only affect SDSs and labels for certain products (aerosols, desensitized explosives and flammable gases). If your firm handles any of these, you will have to ensure that your labels and SDSs for select hazardous chemicals are updated accordingly.

Rule highlights

Labeling — It updates labeling requirements for certain very small containers and bulk containers to ensure the labels are comprehensive and readable.

Manufacturers must only provide the updated label for each individual container with each shipment once the product reaches its customer. Warehousing employees will not be required to open sealed pallets and boxes of containers to relabel them or repackage the product in preprinted bags.

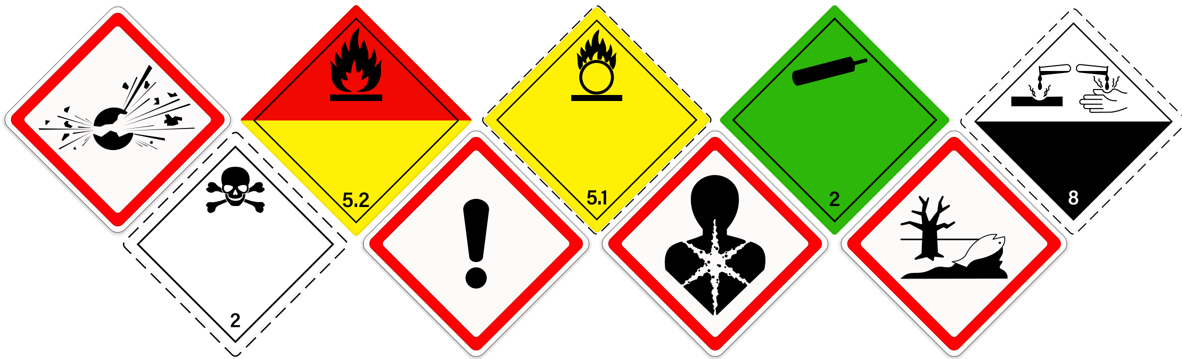
Flammable gas addition — The Flammable Gas hazard class gets a new hazard class (desensitized explosives), as well as new hazard categories:

- Unstable gases in the Flammable Gases class
- Pyrophoric gases in the Flammable Gases class, and
- Nonflammable aerosols in the Aerosols class.

New and revised definitions — There are a number of definitions that are being revised or which are new altogether.

Employer takeaway

HazCom citations are one of the most common citations that OSHA issues. If your operations handle chemicals, you should take the opportunity now to review your HazCom program and plan for compliance by the deadline that affects your company. ❖



Continued from page 1

The Package Aims to Limit Frivolous PAGA Claims

The takeaway

Jennifer Barrera, CEO of the California Chamber of Commerce, said in a prepared statement: "This package provides meaningful reforms that ensure workers continue to have a strong vehicle to get labor claims resolved, while also limiting the frivolous litigation that has cost employers billions without benefiting workers."

While the legislation will not eliminate PAGA, all sides of the agreement predict it would go a long way towards reducing frivolous claims. ❖

Workers' Compensation

Commissioner Orders 2% Benchmark Rate Cut

CALIFORNIA INSURANCE Commissioner Ricardo Lara has ordered that the state's average benchmark workers' compensation rate be cut by 2.1%, starting Sept. 1.

The decision rejected the Workers' Compensation Insurance Rating Bureau's recommendation that the rate be raised by 0.9%, citing a slight uptick in claims costs and claims-adjusting costs.

The benchmark rate, also known as the pure premium rate, is a base rate that insurers can use to price their policies. It only includes only the cost of claims and claims-adjusting costs and does not take into account other forms of overhead and profits.

Also, insurers are not required to use the pure premium rate and are free to price their policies as they see fit, using their own modeling.

> **Experience Matters**
>
> While this year's pure premium rate will decline, some employers may see higher rate increases or rate reductions, depending on their class code, claims experience and X-Mod, and location.

The decision is a further reflection of the low pricing environment for workers' compensation, a rare bright spot in an insurance market that has seen hefty rate increases in other lines, such as commercial property and liability coverage.

The average benchmark rate will fall to $1.38 per $100 of payroll, down from the current $1.41.

What's affecting rates

The tiny rate-increase recommendation by the Rating Bureau was based on continuing downward pressure on claims costs since last year. Drivers of the recommendation included:

- Lower claims cost inflation
- Lower frequency of claims
- Lower overall claims costs
- Higher medical costs
- HIgher claims-adjusting costs.

Reasons behind Lara's decision

Factors that the commissioner cited as influencing his decision include:

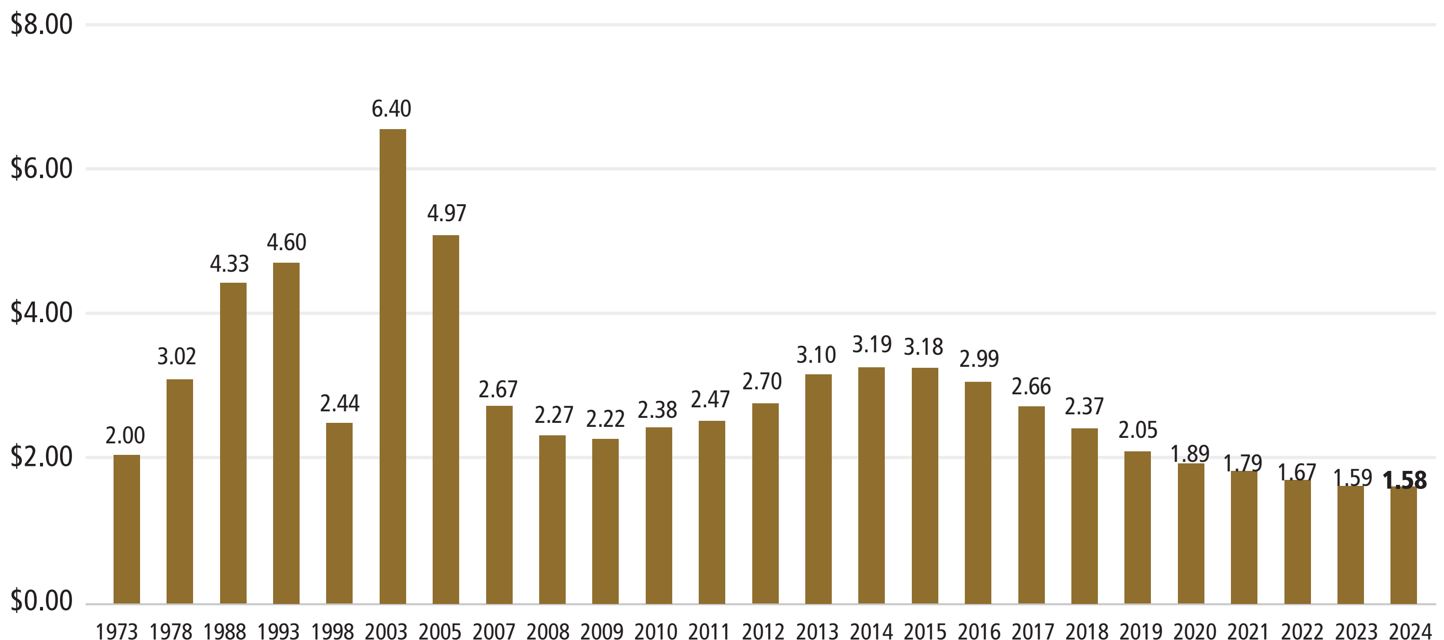
- The continuing decrease in the number of medical services associated with each workers' comp claim, and
- A continuing decline in the percentage of claims with permanent disability benefits.

The new rate applies to policies incepting on or after Sept.1, 2024.

If you have questions about your coverage, please give your agent a call. ❖

RATES LOWEST IN MORE THAN 50 YEARS

Average charged workers' compensation rate (per $100 of payroll)



Source: Workers' Compensation Insurance Rating Bureau

Produced by Risk Media Solutions on behalf of K Taylor Insurance Solutions. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2024 all rights reserved.

Compliance Alert

Cal/OSHA's Indoor Heat Illness Regulations Take Effect

CAL/OSHA's indoor heat illness prevention regulations took effect July 24, requiring employers to implement safety measures when indoor workplace temperatures reach or exceed 82 degrees Fahrenheit.

The new rules apply to most indoor workplaces, such as restaurants, warehouses and manufacturing facilities, and require employers to provide water, rest, cool-down areas and training when temperatures exceed the threshold.

The standard requires employers who have indoor worksites with higher temperatures to take immediate steps to ensure they are in compliance with the new rules.

Under the standard, most requirements for additional protections start at the 82-degree trigger, but additional ones kick in at 87 degrees.

At that point, businesses would be required to take additional steps, when feasible, including cooling down the work areas, implementing work-rest schedules and providing personal heat-protective equipment.

Where workers wear clothing that restricts heat removal or work in high-radiant-heat areas, the additional requirements apply at 82 degrees.

THE MAIN REQUIREMENTS OF THE NEW STANDARD

Indoor Heat Illness Prevention Plan

Employers whose indoor workplaces may exceed the 82-degree threshold will need to create, maintain and make available to employees a heat illness prevention plan (HIPP), which all affected employees should be trained in and read. The plan covers all of the following.

CHILLIN': *Once indoor temperatures reach 82 degrees, employers are required to provide cool-down areas and access to fresh cool water.*

Access to a cool-down area

You must provide access to at least one cool-down area, where the temperature must be kept at below 82 degrees. The cool-down area should be blocked from direct sunlight, be shielded from other high-radiant heat sources and be large enough to accommodate the number of workers on rest breaks so they can sit comfortably without touching each other. The area should be as close as possible to work areas.

Cool-down rest periods

Encourage workers to take preventive cool-down rest breaks and allow those who ask for a cool-down rest break to take one. Workers should be monitored for symptoms of heat-related illness when they are taking such cool-down rests.

Access to water

You must provide access to potable water that is fresh, suitably cool and free of charge. The water shall be located as close as possible to work areas and cool-down areas.

Other Compliance Issues

The standard requires employers to:

- Provide first aid or emergency response to any workers showing heat illness signs or symptoms, including contacting emergency medical services.
- Closely observe new workers and newly assigned employees working in hot areas during a 14-day acclimatization period, as well as all employees working during a heatwave.
- Provide training to both workers and supervisors in the company's HIPP and prevention measures.

The takeaway

The solutions for many businesses will be installing air conditioning that ensures that temperatures never exceed the 82-degree threshold in an indoor workspace. While costly, it can reduce the need for employers to take any additional steps to protect employees against heat illness.

However, this may not be feasible in larger facilities like warehouses and production operations due to costs and difficulty in cooling a large area. ❖