

Analysis of Problem

A. Budget Request Summary

This proposal requests 1.0 position for the Labor and Workforce Development Agency (LWDA), 9.0 positions for the Department of Industrial Relations (DIR), and \$1.6 million in the Labor and Workforce Development Fund (LWDF) for the 2016/17 fiscal year (\$1.5 million ongoing) to stabilize and improve the handling of Private Attorneys General Act cases, largely to the benefit of workers, employers, and the state.

This proposal also requests statutory changes, as reflected on Attachment I, to provide the enhanced oversight needed to achieve the outcomes contemplated below.

B. Background/History

The Private Attorneys General Act (PAGA) was enacted in 2003 to enable private parties to litigate claims and recover penalties for Labor Code violations that previously could only be pursued by the Labor Commissioner or other divisions within DIR. As amended in 2004, PAGA requires employees or their representatives to initiate a case by sending a written notice to the employer and the LWDA which identifies the alleged violations and the facts and theories supporting the claims. The LWDA then has a short time to decide whether to investigate or cite the employer; and the issuance of a citation will preclude private litigation over the same violation. Current law authorizes private litigants to retain 25% of the penalties recovered in a PAGA case, with the remainder being deposited into the LWDF.

Resource History
(Dollars in thousands)

Program Budget	2010/11	2011/12	2012/13	2013/14	2014/15
Authorized Expenditures	0	0	0	n/a	n/a
Actual Expenditures	0	0	0	n/a	n/a
Revenues	4,468	5,276	4,529	5,680	8,365
Authorized Positions	n/a	n/a	n/a	.25	1
Filled Positions	n/a	n/a	n/a	.25	1
Vacancies	n/a	n/a	n/a	0	0

Workload History¹

Workload Measure	2010	2011	2012	2013	2014 ²
PAGA Notices Filed	4,430	5,064	6,047	7,626	6,307
Notices Filed (entered in System)	n/a	n/a	n/a	n/a	2,777

As reflected by the above Resource History chart, neither the LWDA nor DIR has ever had the staffing and resources to effectively review notices, or choose cases for further investigation. DIR took over the administration of PAGA notices/cases in the last quarter of the 2013/14 fiscal year. Since that time, PAGA notices have been sent directly to the headquarters of the Division of Labor Standards Enforcement (DLSE) in San Francisco, where they are reviewed by one employee working under the direction of a unit manager in Oakland. As also reflected above, review and investigations of PAGA claims are quite rare, and usually occur only because a case has been called to the LWDA's attention through some other means besides the PAGA notice. Nevertheless, the ability to review and investigate a PAGA case is

¹ DIR began keeping track of PAGA cases on the behalf of LWDA in the last quarter of the 2013/14 fiscal year. Historically, PAGA cases have not been routinely tracked each fiscal year. Therefore, the "Notices Filed" information is likely understated to some degree. Cases reviewed and investigated cannot be accurately estimated because records have not been historically or systematically tracked. However, the department estimates that less than 1% of cases have historically been reviewed/investigated.

² In spite of the apparent reduction in "PAGA Notices Filed" (although this could be a result of an imprecise case count for 2014), it should be noted that the aggregate amount of PAGA deposits rose from 2013/14 to 2014/15 by ~\$2.7M, or 47% (from \$5.7M to \$8.3M).

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considered an important check on potential abuses in this arena. Attachment II shows the historical percentage of PAGA notices filed by industry.³

C. State Level Considerations

The Administration is committed to reducing unnecessary litigation and lowering the costs of doing business in California to support a thriving economic environment. Given the scope and frequency of PAGA filings, there is great opportunity to increase the rate of administrative handling of cases versus the courts. Reducing the litigation and increasing early resolution will improve outcomes for workers and reduce costs for employers.

D. Justification

As indicated in the Resource History and Workload History charts above, historically, the LWDA and DIR have not been staffed to perform the review and oversight functions contemplated by the Labor Code Sections 2698 – 2699.5 (PAGA). This has contributed to a range of concerns about the PAGA statute itself, including that employers are being sued and incurring substantial costs defending against technical or frivolous claims, and that workers and the state often end up being shortchanged when these cases are settled. Employers are also concerned about potential exposure to large back pay and penalty claims, often pursued through PAGA actions, when courts make new precedential determinations in wage and hour cases. This proposal would address these concerns by providing DIR with the staffing needed to effectively oversee and, when appropriate, step in to handle PAGA cases.

This proposal is needed to stabilize and improve the handling of PAGA cases, largely to the benefit of workers, employers, and the state. Among other things, cases investigated by the state tend to resolve much more quickly with a better outcome for workers in terms of back wages recovered, promptness of payments, and commitments to future compliance, than private PAGA litigation. This will save employers considerable litigation costs and potential liability for plaintiffs' attorneys' fees. In addition, the settlement review authority contemplated by this proposal should deliver better wage recoveries for workers since the current absence of state participation makes it difficult to ensure that settlements are fair to all the affected employees and the state. Finally, greater state oversight and participation in PAGA cases will help reduce PAGA litigation and litigation costs by weeding out marginal and frivolous claims.

If approved, this proposal will create within DIR a unit to carry out the LWDA's responsibilities under PAGA. Under the direction of the Director of Industrial Relations, the PAGA Unit would:

1. Review PAGA notices to determine whether to accept cases for investigation or authorize commencement of private litigation.

As reflected by the Workload History chart, less than 1% of all PAGA cases are reviewed or investigated. The purpose of the current requirement to give the LWDA advance notice of PAGA cases is to enable the LWDA to intercept and investigate claims that may (1) implicate important legal policy issues or (2) overlap with ongoing investigations or other claims that have already come to DIR's attention in another manner. The volume of PAGA notices is as high as 635 notices per month and each requires review from staff with appropriate training/expertise in order to review the case in the time frame required, and make a determination whether to investigate.

2. Investigate accepted cases and determine whether to (1) cite the employer for Labor Code violations, and (2) settle claims with the employer.

When a decision is made to investigate a PAGA case, it forestalls private litigation during the statutory investigation period (currently 120 days), makes that private dispute a matter of public interest, and completely usurps the private claims if a citation is issued to the employer for the same violations asserted in the PAGA notice. Currently, DIR lacks the resources to reach a solid conclusion and cite or settle within the allotted time before losing the ability to forestall private litigation. Two recent PAGA cases required an average of 325 hours in staff time (investigators, auditors, and support), 90 hours of attorney time, plus additional time from high-level decision-makers in each case, all of which had to be

³ Based on 2014/15 fiscal year data.
PAGA Resources

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squeezed in with other regular casework. Currently, the size of the task coupled with the lack of extra time and resources operate as a great disincentive against accepting PAGA cases for investigation. The additional resources requested in this proposal will allow DIR to accept cases with broader labor policy issues of statewide interest that would otherwise be decided by the courts through essentially private litigation.

3. **Litigate and manage resolution of cases in which the employer has been cited or has settled.**

A PAGA investigation must conclude with a formal citation of the employer in order to foreclose private litigation against the employer over the same violations. The citation may be an administrative citation that is subject to an appeal and litigation by the employer, or it may take the form of an agency lawsuit which charges the employer with the violations, and which must be litigated in superior court. Both options require a major commitment of resources and professional staff time following the citation. If the requested resources are approved, DIR's goal will be to cite *and settle* with the employer in order to largely avoid this commitment, although settlements themselves must be managed and sometimes must be enforced through court action when terms are violated. To fulfill the purpose of the PAGA procedures for agency notice and involvement, the LWDA must have the resources not only to investigate some of the cases, but also to see a case all the way through once an employer has been cited.

4. **Evaluate and approve proposed settlements of PAGA litigation.**

Current law authorizes private litigants to retain 25% of the penalties recovered in a PAGA case and to turn over the other 75% to the LWDF. It also requires the superior court to review and approve any settlement involving penalties. However, with the exception of cases involving OSHA violations (in which case the court must also review the adequacy of the safety protections or remedies), there is no requirement to notify or seek agency input on the adequacy of a settlement. Because most judges have no particular expertise in labor law and must rely upon the knowledge and representations of counsel, both of whom are interested in having the settlement approved, there is no assurance that settlements are in fact fair to all the affected employees or the state. The dynamics at play in major litigation tend to work against such assurances: protracted litigation creates strong incentives to settle in a way that best protects the interests of the actual plaintiffs and their attorneys, while discounting the claims and interests of other employee class members. These dynamics also run counter to PAGA's fundamental goal of enabling private parties to aid in the enforcement of labor laws for the public benefit rather than purely their own private interest.

Requiring that the agency have notice and an opportunity to object to any proposed settlement in a PAGA case (*i.e.* extending the current OSHA requirement to all cases) would provide an effective check and balance to ensure that the public purposes of PAGA are being fulfilled; in particular, that the legal rights of affected employees are being fully protected. Legal staff will be needed to review the proposed settlements and to file objections in those cases where the settlements appear inadequate or unfair. The cost of this work is likely to be offset if not exceeded by larger penalty recoveries to the state, as this mechanism will also provide DIR with the means to ensure that the appropriate amount of revenue for each case is transmitted to the LWDF.

5. **Evaluate petitions for amnesty relief arising out of new precedent or legal development and determine time frame and conditions for amnesty relief.**

If approved, this proposal will also create a mechanism through which DIR can set up an amnesty plan in situations where an industry-wide practice has been invalidated through a major court decision or other development that creates potentially crippling liabilities under PAGA. The basic goal of such an amnesty is to induce employers to move quickly to make their employees whole for past violations and bring their practices into conformity with current law in exchange for substantial relief from the penalties and other special damages that would be available in a PAGA case. DIR has recently worked on amnesty-style settlements and legislation affecting piece-rate workers and drayage truck operators; and

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this experience showed that each plan must be tailored around the specific issues and practices of the affected industries. For this reason, the proposal would give DIR responsibility to determine the need for amnesty relief in a given situation and then to craft and administer an appropriate amnesty plan.

The proposal would provide DIR with the attorneys, investigators, and support staff to exercise oversight functions under PAGA as listed above, including those functions that would be added through PAGA reform legislation. The requested LWDA Assistant General Counsel position is necessary to fulfill LWDA's oversight responsibilities, as the LWDA is ultimately responsible for oversight and implementation of the PAGA statutes. The attorney's responsibilities will include helping to stand-up the program by establishing the PAGA program policy parameters and monitoring the new program, reviewing and providing oversight and direction in the more complicated PAGA settlements, reviewing and assisting with DLSE litigation arising from cases in which the employer has been cited, advising the LWDA Secretary and the General Counsel on PAGA related legal and statewide policy issues, and responding to LWDA PAGA Public Records Act requests. Estimated annual outcomes are listed in the Outcomes and Accountability section below.

See Attachment III for additional workload by position.

This proposal will also make a number of modest revisions to the PAGA statute to improve the state's oversight of PAGA cases and better insure that they are pursued in the public's interest and not just for private purposes. Proposed revisions would provide for the following:

- Require more detail in the PAGA claim notices filed with the LWDA and require that claims for ten or more employees be verified and accompanied by a copy of the proposed complaint.
- Extend the LWDA's time to review PAGA notices from 30 to 60 days, and specify that employers may submit a request for the LWDA to investigate a PAGA claim.
- Require PAGA notices and employer responses to be submitted online and accompanied by a filing fee.
- Extend the time for the LWDA to investigate an accepted claim from 120 to 180 days.
- Require the Director of Industrial Relations to be served with a copy of the complaint when a PAGA case is filed.
- Require court approval of all PAGA case settlements, and require that the Director of DIR be provided with notice and an opportunity to object before the court determines whether to approve a settlement.
- Create a separate procedure through which interested parties may ask the Director of DIR to establish a temporary amnesty and safe harbor program to provide expedited back wage payments to employees and penalty relief to employers following the invalidation of a widespread industry practice (similar to Assembly Bill 1513, Chapter 754, Statutes of 2015).

E. Outcomes and Accountability

Projected Outcomes

Workload Measure	CY	2016	2017	2018	2019	2020
Review of PAGA Notices	250	900	900	900	900	900
Case Investigation (Cases retained)	n/a	45	45	45	45	45
Settlement Review/Approval	n/a	270	270	270	270	270
Case Litigation	n/a	Unknown	Unknown	Unknown	Unknown	Unknown
Review of Amnesty Petitions	n/a	1	1	1	1	1

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F. Analysis of All Feasible Alternatives

1. Continue to process receipt of PAGA filings with current staffing levels.

Pros: No additional resources required.

Cons: While LWDA's notice and investigation rights are perceived as an important check and balance on potential abuses in PAGA litigation, the reality is that LWDA lacks the ability to meaningfully review notices or investigate more than handful of the thousands of claims that come through.

As a practical matter, the typical PAGA notice will not get reviewed or investigated unless someone calls it to the special attention of LWDA. In addition, while current law requires court approval of settlements involving penalties, courts lack the means to provide effective oversight, and there is no way to determine if the public's interest is being served or appropriate penalties being recovered in individual cases.

The process may continue at its current level, however the potential for time and workload savings, improved outcomes for private litigants, and reduced litigation overall will accordingly continue to elude the state. It could be argued that the ongoing societal costs tied to this alternative would dwarf the resources requested by this proposal.

2. Remove the statutory provision (Labor Code section 2698 et sec.) that allows PAGA.

Pros: The purpose for PAGA's adoption and amendment in 2004 was to give private litigants the ability to take over some of the enforcement work that previously had been entrusted exclusively to DIR and the Labor Commissioner. This was in response to DIR's limited capacity to address the broad range of claims and violations under the Labor Code. PAGA could be repealed to return all penalty enforcement authority to the exclusive jurisdiction of DIR and curtail what some regard as abusive private litigation under PAGA.

Cons: This would simply return the state to the status quo of 2003, when DIR could not come close to absorbing and handling all of the enforcement work that had been entrusted to it under the Labor Code.

3. Approve the proposal.

Pros: Additional staffing would enable the PAGA Unit resources to stabilize and improve the handling of PAGA cases, largely to the benefit of workers, employer, and the state.

Cons: Additional cost to the State.

G. Implementation Plan

LWDA and DIR would begin hiring once the BCP is approved and the funds are appropriated. Resources would be augmented to support the functions described in this proposal. Improved tracking, review and monitoring will enable ongoing evaluation of performance and progress in handling filings administratively, as deemed appropriate. Reports will be reviewed and updated for management review and for purposes of informing the administration of cost avoidance achieved through this proposal.

H. Supplemental Information

N/A

I. Recommendation

Approve this request for 1.0 position for the Labor Workforce and Development Agency, 9.0 positions for the Department of Industrial Relations, and \$1.6 million in the LWDF for the 2016/17 fiscal year (\$1.4 million ongoing) to stabilize and improve the handling of PAGA cases, largely to the benefit of workers, employers, and the state (See Attachments IV and V for current/proposed Fund Conditions).

Approve the attached Trailer Bill Language to implement the statutory changes needed to provide DIR with the enhanced oversight needed to the stated outcomes.

SECTION 1. Section 2699 of the Labor Code is amended as follows:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, "person" has the same meaning as defined in Section 18.

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e) (1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee

per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to paragraph (1)(D) of subdivision (a) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l)(1) Within 10 days following commencement of a civil action pursuant to this part,

the aggrieved employee or representative shall provide the Director of Industrial Relations with a file-stamped copy of the complaint that includes the case number assigned by the court, and shall thereafter notify the director of any proposed settlement in accordance with subparagraph (2).

(2) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the director at the same time that it is submitted to the court, and the director shall be provided with an opportunity to object to or comment upon the proposed settlement before the court determines whether to approve the penalties sought as part of the settlement.

(3) Items required to be submitted to the director under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

SECTION 2. Section 2699.3 of the Labor Code is amended as follows:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by certified mail to by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including a statement setting forth the relevant facts, legal contentions, and theories to authorities supporting the each alleged violation. The notice shall also include an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought.

(B) If the aggrieved employee or representative is seeking relief on behalf of ten or more employees, the notice shall be verified in the manner prescribed by Section 446 of the Code of Civil Procedure, and a copy of the proposed complaint shall be attached to the notice.

(C) Within 30 days after receiving the notice prescribed by paragraph (A), the employer may request the Labor and Workforce Development Agency to investigate

one or more of the claims raised in the notice. The employer's request shall be filed online with the Labor and Workforce Development Agency and sent by certified mail to the aggrieved employee or representative, and shall specify the basis for requesting the investigation.

(D) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) shall be accompanied by a filing fee of \$150.00 if also subject to requirements of subparagraph (B), or \$75.00 in all other cases. An employer request filed with the Labor and Workforce Development Agency pursuant to subparagraph (C) shall be accompanied by a filing fee of \$50.00. The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(E) The fees paid pursuant to subparagraph (D) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within ~~30-60~~ calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within ~~33-65~~ calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within ~~33-65~~ calendar days of the postmark date of the notice received pursuant to paragraph (1). Within ~~420-180~~ calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the ~~458-245~~ day period prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by online filing with certified mail to the Division of Occupational Safety and Health and by certified mail to

the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions

of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1)(A) The aggrieved employee or representative shall give written notice by online filing with ~~certified mail~~ to the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including a statement setting forth the relevant facts, legal contentions, and theories to authorities supporting the each alleged violation. The notice shall also include an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought.

(B) If the aggrieved employee or representative is seeking relief on behalf of ten or more employees, the notice shall be verified in the manner prescribed by Section 446 of the Code of Civil Procedure, and a copy of the proposed complaint shall be attached to the notice.

(C) Within 30 days after receiving the notice prescribed by paragraph (A), the employer may request the Labor and Workforce Development Agency to investigate one or more of the claims raised in the notice. The employer's request shall be filed online with the Labor and Workforce Development Agency and sent by certified mail to the aggrieved employee or representative, and shall specify the basis for requesting the investigation.

(D) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) shall be accompanied by a filing fee of \$150.00 if also subject to requirements of subparagraph (B), or \$75.00 in all other cases. An employer request filed with the Labor and Workforce Development Agency pursuant to subparagraph (C) or a cure notice submitted pursuant to paragraph (2)(A) of this subdivision, whichever is submitted first, shall be accompanied by a filing fee of \$50.00. The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(E) The fees paid pursuant to subparagraph (D) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice by ~~certified mail~~ within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if

the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the postmark date receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

SECTION 3. Section 2699.7 of the Labor Code is added as follows:

2699.7 Notwithstanding any other statute, the Director of Industrial Relations may establish a temporary amnesty or safe harbor program to provide expedited back wages to workers and penalty relief to employers, consistent with the requirements of this Section, when the conditions of subdivision (a) are met.

(a) A temporary amnesty or safe harbor program may be established upon the petition of one or more interested parties and findings by the director that all of the following are true:

(1) A published decision of the Supreme Court or a court of appeal or a similar legal development has invalidated a commonplace industry practice which a substantial segment of the industry previously believed in good faith to be legal.

(2) The decision or development referred to paragraph (1) affects 10,000 or more

employees and is likely to lead to the filing of actions against at least five different employers to recover penalties under the Labor Code pursuant to this part.

(3) Good cause exists to establish a temporary or safe harbor program, including that the program is likely to provide more relief to employees than private litigation.

(b) A party filing a petition for relief under this Section shall provide notice and copies of the petition and supporting documentation to other parties known to be interested in the potential amnesty or safe harbor program, including but not necessarily limited to representatives of employees, employers, and worker or industry advocacy groups. Any party receiving the petition shall have fifteen days to submit a response to the director and shall provide copies of that response and supporting documentation to the petitioner and other interested parties identified in the petition. The director may expand the parties entitled to notice and any time limits for responding to a petition or to a response to a petition.

(c) An amnesty or safe harbor plan established by the director pursuant to this Section shall include the following:

(1) A requirement to fully compensate employees, including former employees, for back wages due in light of the decision or development referred to paragraph (1) of subdivision (a).

(2) A time frame, including beginning and ending dates, for determining the back wages due to each employee.

(3) Any requirements for determining and adding interest or other amounts to the back wages due.

(4) A time limit, not to exceed eighteen (18) months, for making back payments to employees.

(5) Requirements to provide appropriate documentation, consistent with the requirements of Section 226, for all back payments, and to retain records of calculations and back payments for at least four years after the time limit referred to in paragraph (4) of this subdivision.

(6) Requirements to make diligent good faith efforts to locate former employees and to pay the amounts due to employees who cannot be located to the Unpaid Wage Fund pursuant to Section 96.7, together with a prescribed administrative fee.

(7) A provision providing for the suspension of the statute of limitations for affected wage, damages, and penalty claims during the time frame referred to in paragraph (2) of this subdivision.

(8) A provision providing for the reduction in whole or in part of statutory penalties and damages under the Labor Code for employers who comply with the terms of the amnesty or safe harbor program.

(d) An amnesty or safe harbor program established by the director pursuant to this

Section shall not extend to any of the following:

(1) Claims in litigation prior to the decision or development referred to paragraph (1) of subdivision (a).

(2) Claims resolved by an order or judgment that was final and not subject to further appeal prior to the effective date of the amnesty or safe harbor program.

(3) Claims arising on or after the effective date of the amnesty or safe harbor program.

(e) The decision to establish or not establish an amnesty or safe harbor program under this Section is within the sole discretion of the director and is not subject to the rulemaking or adjudication procedures of the Administrative Procedure Act in Chapters 3.5 (commencing with Section 11340), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Department of Industrial Relations
Fiscal Year 2016/17 Budget Change Proposal
Private Attorneys General Act (PAGA) Resources
Percentage of PAGA Cases by Industry

Industry

Professional, Technical, Clerical, Mechanical & Similar Occupations	55.1%
Public Housekeeping Industry	16.1%
Mercantile Industry	11.9%
Transportation Industry	5.4%
Manufacturing Industry	2.8%
Certain on-site occupations in the construction, drilling, logging and mining industries	2.6%
Personal Service Industry	1.7%
Amusement and Recreation Industry	1.3%
Agricultural Occupations	0.9%
Broadcasting Industry & Motion Picture Industry	0.6%
Broadcasting Industry	0.4%
Laundry, Linen Supply, Dry Cleaning & Dyeing Industry	0.3%
Industries Handling Products after Harvest	0.3%
Household Occupations	0.2%
Canning, Freezing, and Preserving Industry	0.2%
Industries Preparing Agricultural Products for Market on the Farm	0.2%
Miscellaneous Employees	0.0%

Department of Industrial Relations
 Fiscal Year 2016/17 Budget Change Proposal
 Private Attorneys General Act (PAGA) Resources
 Workload

Attachment III

Review of PAGA Notices	IRC	Legal Analyst	Investigator	Auditor	OT
Number of Reviews	0	900	0	900	900
Hours/Review	0	1	0	3	2
Total Hours	0	900	0	2,700	1,800

Case Investigations	IRC	Legal Analyst	Investigator	Auditor	OT
Number of Cases	45	45	45	45	45
Hours/Case	80	15	80	4	4
Total Hours	3,600	675	3,600	180	180

Review/Approval of Settlements	IRC	Legal Analyst	Investigator	Auditor	OT
Number of Reviews	270	270	270	270	270
Hours/Review	6	2	2	1	1
Total Hours	1,620	540	540	270	270

Total Hours	5,220	2,115	4,140	3,150	2,250
Total Positions Requested	3	1	2	2	1

DEPARTMENT OF INDUSTRIAL RELATIONS
FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
Private Attorneys General Act Resources
CURRENT FUND CONDITION
(dollars in thousands)

ATTACHMENT IV

	Actual 2013-14	Actual 2014-15	Estimated 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19	Projected 2019-20	Projected 2020-21
3078 Labor and Workforce Development Fund								
BEGINNING BALANCE	9,289	10,012	12,634	12,590	12,546	12,502	12,458	12,414
Prior Year Adjustments	-31		-	-		-	-	-
Adjusted Beginning Balance	<u>9,258</u>	<u>10,012</u>	<u>12,634</u>	<u>12,590</u>	<u>12,546</u>	<u>12,502</u>	<u>12,458</u>	<u>12,414</u>
REVENUES AND TRANSFERS								
Revenues:								
4173500 Settlements and Judgments - Other	5,680	8,365	6,000	6,000	6,000	6,000	6,000	6,000
Total Revenues and Transfers	<u>5,680</u>	<u>8,365</u>	<u>6,000</u>	<u>6,000</u>	<u>6,000</u>	<u>6,000</u>	<u>6,000</u>	<u>6,000</u>
Total Resources	<u>14,938</u>	<u>18,377</u>	<u>18,634</u>	<u>18,590</u>	<u>18,546</u>	<u>18,502</u>	<u>18,458</u>	<u>18,414</u>
EXPENDITURES								
Expenditures:								
0559 Labor and Workforce Development Agency (State Operations)	232	269	324	324	324	324	324	324
7300 Agricultural Labor Relations Board (State Operations)	1,000	1,093	1,167	1,167	1,167	1,167	1,167	1,167
7350 Department of Industrial Relations (State Operations)	3,668	4,377	4,543	4,543	4,543	4,543	4,543	4,543
8880 Financial Information System for California (State Operations)	26	4	10	10	10	10	10	10
Total Expenditures	<u>4,926</u>	<u>5,743</u>	<u>6,044</u>	<u>6,044</u>	<u>6,044</u>	<u>6,044</u>	<u>6,044</u>	<u>6,044</u>
FUND BALANCE	<u>10,012</u>	<u>12,634</u>	<u>12,590</u>	<u>12,546</u>	<u>12,502</u>	<u>12,458</u>	<u>12,414</u>	<u>12,370</u>
Reserve for economic uncertainties	10,012	12,634	12,590	12,546	12,502	12,458	12,414	12,370

DEPARTMENT OF INDUSTRIAL RELATIONS
 FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
 Private Attorneys General Act Resources
 PROPOSED FUND CONDITION
 (dollars in thousands)

ATTACHMENT V

	Actual 2013-14	Actual 2014-15	Estimated 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19	Projected 2019-20	Projected 2020-21
3078 Labor and Workforce Development Fund								
BEGINNING BALANCE	9,289	10,013	12,635	13,091	11,979	10,943	9,907	8,871
Prior Year Adjustments	-31		-	-		-	-	-
Adjusted Beginning Balance	<u>9,258</u>	<u>10,013</u>	<u>12,635</u>	<u>13,091</u>	<u>11,979</u>	<u>10,943</u>	<u>9,907</u>	<u>8,871</u>
REVENUES AND TRANSFERS								
Revenues:								
4173500 Settlements and Judgments - Other	5,680	8,365	6,500	6,500	6,500	6,500	6,500	6,500
Total Revenues and Transfers	<u>5,680</u>	<u>8,365</u>	<u>6,500</u>	<u>6,500</u>	<u>6,500</u>	<u>6,500</u>	<u>6,500</u>	<u>6,500</u>
Total Resources	<u>14,938</u>	<u>18,378</u>	<u>19,135</u>	<u>19,591</u>	<u>18,479</u>	<u>17,443</u>	<u>16,407</u>	<u>15,371</u>
EXPENDITURES								
Expenditures:								
0559 Labor and Workforce Development Agency (State Operations)	232	269	324	324	324	324	324	324
0559 16/17 PAGA Unit BCP				207	199	199	199	199
7300 Agricultural Labor Relations Board (State Operations)	1,000	1,093	1,167	1,167	1,167	1,167	1,167	1,167
7350 Department of Industrial Relations (State Operations)	3,668	4,377	4,543	4,543	4,543	4,543	4,543	4,543
7350 16/17 PAGA Unit BCP				1,361	1,293	1,293	1,293	1,293
8880 Financial Information System for California (State Operations)	26	4	10	10	10	10	10	10
Total Expenditures	<u>4,926</u>	<u>5,743</u>	<u>6,044</u>	<u>7,612</u>	<u>7,536</u>	<u>7,536</u>	<u>7,536</u>	<u>7,536</u>
FUND BALANCE*	<u>10,013</u>	<u>12,635</u>	<u>13,091</u>	<u>11,979</u>	<u>10,943</u>	<u>9,907</u>	<u>8,871</u>	<u>7,835</u>
Reserve for economic uncertainties	10,013	12,635	13,091	11,979	10,943	9,907	8,871	7,835

BCP Fiscal Detail Sheet

BCP Title: Private Attorney General Act Resources

DP Name: 7350-003-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	9.0	9.0	9.0	9.0	9.0
Total Positions	0.0	9.0	9.0	9.0	9.0	9.0
Salaries and Wages						
Earnings - Permanent	0	688	688	688	688	688
Total Salaries and Wages	\$0	\$688	\$688	\$688	\$688	\$688
Total Staff Benefits	0	353	353	353	353	353
Total Personal Services	\$0	\$1,041	\$1,041	\$1,041	\$1,041	\$1,041
Operating Expenses and Equipment						
5301 - General Expense	0	14	14	14	14	14
5302 - Printing	0	7	7	7	7	7
5304 - Communications	0	10	10	10	10	10
5306 - Postage	0	14	14	14	14	14
5320 - Travel: In-State	0	22	22	22	22	22
5322 - Training	0	1	1	1	1	1
5324 - Facilities Operation	0	115	115	115	115	115
5344 - Consolidated Data Centers	0	30	30	30	30	30
5346 - Information Technology	0	35	35	35	35	35
5368 - Non-Capital Asset Purchases - Equipment	0	72	4	4	4	4
Total Operating Expenses and Equipment	\$0	\$320	\$252	\$252	\$252	\$252
Total Budget Request	\$0	\$1,361	\$1,293	\$1,293	\$1,293	\$1,293
Fund Summary						
Fund Source - State Operations						
3078 - Labor and Workforce Development Fund	0	1,361	1,293	1,293	1,293	1,293
Total State Operations Expenditures	\$0	\$1,361	\$1,293	\$1,293	\$1,293	\$1,293
Total All Funds	\$0	\$1,361	\$1,293	\$1,293	\$1,293	\$1,293
Program Summary						
Program Funding						
6105005 - Labor Standards Enforcement Program	0	1,361	1,293	1,293	1,293	1,293

9900100 - Administration	0	1,361	1,293	1,293	1,293	1,293
9900200 - Administration - Distributed	0	-1,361	-1,293	-1,293	-1,293	-1,293
Total All Programs	\$0	\$1,361	\$1,293	\$1,293	\$1,293	\$1,293

Personal Services Details

Positions	Salary Information			CY	BY	BY+1	BY+2	BY+3	BY+4
	Min	Mid	Max						
1139 - Office Techn (Typing)				0.0	1.0	1.0	1.0	1.0	1.0
4175 - Auditor I				0.0	2.0	2.0	2.0	2.0	2.0
5237 - Legal Analyst				0.0	1.0	1.0	1.0	1.0	1.0
5780 - Atty IV				0.0	3.0	3.0	3.0	3.0	3.0
8610 - Investigator				0.0	1.0	1.0	1.0	1.0	1.0
9504 - Dep Labor Commissioner III				0.0	1.0	1.0	1.0	1.0	1.0
Total Positions				0.0	9.0	9.0	9.0	9.0	9.0

Salaries and Wages	CY	BY	BY+1	BY+2	BY+3	BY+4
1139 - Office Techn (Typing)	0	38	38	38	38	38
4175 - Auditor I	0	90	90	90	90	90
5237 - Legal Analyst	0	54	54	54	54	54
5780 - Atty IV	0	365	365	365	365	365
8610 - Investigator	0	63	63	63	63	63
9504 - Dep Labor Commissioner III	0	78	78	78	78	78
Total Salaries and Wages	\$0	\$688	\$688	\$688	\$688	\$688

Staff Benefits	CY	BY	BY+1	BY+2	BY+3	BY+4
5150350 - Health Insurance	0	85	85	85	85	85
5150600 - Retirement - General	0	173	173	173	173	173
5150900 - Staff Benefits - Other	0	95	95	95	95	95
Total Staff Benefits	\$0	\$353	\$353	\$353	\$353	\$353
Total Personal Services	\$0	\$1,041	\$1,041	\$1,041	\$1,041	\$1,041