Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
May 2019 Issue

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California's Private Attorney General Act is enforceable against public entities

AN ISSUE OF FIRST IMPRESSION: DOES PAGA, WITH ITS QUI TAM ACTIONS, APPLY TO PUBLIC EMPLOYEES?

"It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience." (Alexander Hamilton, *Federalist No. 15* (1787).)

In 2003, the Legislature found that California's labor law enforcement agencies were significantly under-resourced and had failed to keep pace with the State's rapid population growth. Take, for example, the Division of Occupational Safety and Health, the State agency responsible for ensuring workplace safety commonly referred to as "Cal/OSHA." Between 1980 and 2000, California's workforce grew by 48 percent while Cal/OSHA's budgetary resources actually decreased by 14 percent. (Assembly Com. on Labor and Employment, Analysis of Sen. Bill No. 796 (2003-2004 Reg. Sess.) as amended July 2, 2003, pp. 3-4.)

As with Hamilton, the Legislature declared that "California has important worker protections," but "these laws are meaningless if they are not enforced." (Assembly Jud. Com., Analysis of Sen. Bill No. 1809 (2004-2005 Reg. Sess.) as amended May 26, 2004, p. 4.) Meanwhile, the State had just made significant spending cuts and borrowed $10.7 billion in bond funding in an attempt to close the ongoing budget deficit. (*Major Features of the California Budget* (May 19, 2003) Legislative Analyst's Office <https://lao.ca.gov/2003/major_features_03-04/major_features_03-04.html> [as of March 26, 2019].) The Legislature and the Governor acknowledged that they were "unable to increase state enforcement," but they were also "unwilling to tell workers that the state will turn a blind eye to enforcing laws to protect their safety and their earnings." (Assembly Jud. Com., Analysis of Sen. Bill No. 1809 (2004-2005 Reg. Sess.) as amended May 26, 2004, p. 4.)

Thus, the Legislature passed the Labor Code Private Attorneys General Act of 2004 ("PAGA"), a statute which deputized workers throughout the State by creating a special type of qui tam action for enforcement of the Labor Code. (Lab. Code, § 2698 et seq.; all further statutory references are to the Labor Code unless otherwise specified.) Since PAGA's passage, when the State's labor law enforcement officials fail to investigate alleged Labor Code violations in a timely fashion, an "aggrieved employee" who has suffered at least one of the violations may bring a representative action and pursue civil penalties on behalf of all "current and former employees" that have suffered any Labor Code violations from the same employer. (§§ 2699(a), (c), 2699.3.)

Fifteen years later, many questions regarding PAGA's scope and application remain unanswered by the appellate courts. In this article, we address one such issue of first impression. Specifically, no California published opinion has yet addressed whether PAGA applies to public employees – an issue with dramatic ramifications for hundreds of thousands of workers across the State. The earnings and safety of public and private employees are equally threatened by lack of enforcement that led to PAGA's passage, yet counsel for public entities will continue to argue that public servants cannot pursue these claims because of sovereign immunity and related arguments.

Upon close inspection, these arguments fall far short. Below we discuss PAGA's legislative history, its public policy underpinnings, and numerous canons of statutory interpretation, all of which converge on one inescapable conclusion. Public servants are just as entitled to fair treatment and safe workplaces as private sector workers, and the Legislature plainly intended for both of them to utilize PAGA to bring all California employers into compliance with California law.

What is PAGA and how does it work?

PAGA authorizes aggrieved employees to file lawsuits against their employers to recover civil penalties for Labor Code violations. Prior to PAGA's enactment in 2003, the civil penalties specified in various Labor Code sections could only be pursued by the Labor Commissioner. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 378.) However, many of these Labor Code violations would go unenforced due to limited government resources. (*Id*. at p. 379.)

PAGA was enacted to address ineffective enforcement in two ways. First, it created penalties for violations of Labor Code sections that were previously only punishable as criminal misdemeanors, with no civil penalties attached. (§ 2699(f); *Iskanian*, *supra*, 59 Cal.4th at p. 379.) Second, it authorized aggrieved private citizens to bring civil actions to recover the civil penalties. (§ 2699(a); *Iskanian*, *supra*, 59 Cal.4th at pp. 379-380.)

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A PAGA action is a representative qui tam action. Qui tam plaintiffs help the government stop fraud and corruption by recovering money stolen from the State of California. "'*Qui tam*' is part of the longer Latin phrase '*qui tam pro domino rege quam pro se ipso in hac parte sequitur*,' which means 'who brings the action for the king as well as for himself.'" (*City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.* (2003) 109 Cal.App.4th 1668, 1672, citations omitted.)

A PAGA action is brought by an aggrieved employee to recover a statutory penalty, with a portion of the penalty going to affected employees, but the State of California remains the real party in interest. (*Iskanian*, *supra*, 59 Cal.4th at p. 382.) Therefore, before filing a PAGA action, an aggrieved employee must follow the notice requirements in section 2699.3. If the government decides not to investigate the alleged violation, the aggrieved employee may pursue the claim on the government's behalf.

Attorney's fees

Only 25 percent of any civil penalties recovered is distributed to aggrieved employees – the remaining 75 percent is distributed to the Labor and Workforce Development Agency (i.e., the government). (§ 2699(i).) However, PAGA provides an important incentive to plaintiffs' attorneys who take on such cases by authorizing attorney's fees and costs to those who prevail. (§ 2699(g)(1).)

Public entities are liable for PAGA penalties

Public entities are liable for PAGA penalties despite the absence of published case law saying so. Even with the strong incentives to pursue PAGA actions, there is very little case law involving PAGA actions against public entity employers. Notably, we could not find any cases – published or unpublished, affirmed or reversed – involving a judgment that included PAGA penalties assessed against a public entity. We did find a single published opinion involving a public transportation company's demurrer to a former employee's PAGA claim. (*Flowers v. Los Angeles Cty. Metro. Transportation Auth.* (2015) 243 Cal.App.4th 66, 86.) The public entity's sole basis for demurring to the PAGA claim was its argument that the plaintiff's minimum wage claim was precluded by various Public Utilities Code ("PUC") sections. (*Id.* at p. 86.) Having determined that the PUC did not bar the plaintiff's Labor Code section 1194 minimum wage claim, the appellate court also reversed the order sustaining the demurrer to the plaintiff's derivative PAGA claim. (*Ibid.*) As of the publication of this article, *Flowers* is still pending in the Los Angeles Superior Court, Case No. BC515136.

We also found three unpublished opinions dismissing PAGA claims against public entities, but as with the basis for the demurrer in *Flowers*, none were dismissed on the basis that a PAGA claim cannot be brought against a public entity. (*Heller v. Regents of Univ. of California* (Cal. Ct. App. July 31, 2017) No. B271468, 2017 WL 3224852, at p. *10 [affirming dismissal of plaintiff's PAGA claim, which was derivative of Labor Code claims also dismissed on summary judgment]; *Yap v. Los Angeles Dep't of Water & Power* (Cal. Ct. App. May 10, 2012) No. B230969, 2012 WL 1631878, at p. *10 [same]; *Bazua v. City of Montebello* (Cal. Ct. App. Mar. 14, 2016) No. B257628, 2016 WL 944418, at p. *7 [affirming order striking PAGA claims because plaintiff did not bring a representative action].) Although these cases do not definitively prove that PAGA claims may be brought against public entities, one would expect such claims to be summarily dismissed citing a public entity exemption if PAGA claims could only be brought against private employers. The absence of any such example is striking.

Tellingly, nowhere in section 2698 et seq. does the statute state that public entities are exempt from PAGA actions. In fact, the plain language of PAGA demonstrates that it is applicable to public entities. Section 2699(f)(3) specifies that an employee of the Labor and Workforce Development Agency ("LWDA"), or any division thereof, may not recover civil penalties under PAGA. If all public agencies were exempt from PAGA liability, there would be no reason for the Legislature to specifically exclude the LWDA and its affiliates – all of which are public entities – from PAGA's default penalty provisions. A reading of PAGA as inapplicable to public employers would render section 2699(f)(3) meaningless, violating the canon of statutory interpretation precluding interpretations that would render any of the words in a statute surplusage. (*Mercer v. Perez* (1968) 68 Cal.2d 104, 112.)

Other Labor Code sections that reference PAGA also demonstrate that PAGA actions are enforceable against public entities. For example, section 6434.5 requires civil or administrative penalties assessed against public police and fire departments to be deposited into the Workers' Compensation Administration Revolving Fund. But subsection (c) states, "[t]his section does not apply to that portion of any civil or administrative penalty that is distributed directly to an aggrieved employee or employees *pursuant to the provisions of Section 2699*." (§ 6434.5(c), emphasis added.) Obviously, there would be no reason for the statute to exclude the 25 percent of PAGA penalties distributed directly to aggrieved employees if section 6434.5, which specifically relates to penalties assessed against *public* police and fire departments, was not applicable to public entities.

Sovereign-immunity challenges

Plaintiff's attorneys should expect sovereign-immunity challenges to PAGA claims brought against public entities. For example, at least one appellate court has held that application of sections 510 (overtime pay) and 512 (meal breaks) to a water district would infringe on the public entity's sovereign powers, despite merely requiring the government entity to exercise that power in a manner that was not contrary to law. (*Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 733.)

In *Wells v. One2One Learning Found.* (2006) 39 Cal.4th 1164, 1196, the Supreme Court stated that where a

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statute does not expressly state its applicability to public entities, the Court would not lightly presume application to public entities was intended where to do so would interfere with public entities' ability to carry their public missions. Nonetheless, the Court noted, "[o]f course, where liability otherwise exists, public entities must pay legal judgments from their limited revenues and appropriations, even if they cannot exceed their tax or appropriations ceilings to do so and must therefore cut spending in other areas. . . This obligation, in and of itself, does not infringe their 'sovereign powers.'" (*Wells*, *supra*, 39 Cal.4th at p. 1196, citations omitted.)

The Court acknowledged that whereas "the 'sovereign powers' principle can help resolve an unclear legislative intent, it cannot override positive indicia of a contrary legislative intent." (*Wells*, *supra*, 39 Cal.4th at p. 1193.) Notably, despite the absence of an express legislative proclamation that the government "waives sovereign immunity," the statutory language of PAGA indicates such an intent. As previously mentioned, sections 2699(f)(3) and 6434.5(c) contain such express words necessarily rendering PAGA applicable to public entities. We cannot presume that the Legislature intended these statutory provisions to be superfluous. (*Mercer v. Perez* (1968) 68 Cal.2d 104, 112.)

In any event, *Wells* held that government agencies are excluded from general statutory provisions "only if their inclusion would result in an infringement upon sovereign governmental powers." (*Wells*, *supra*, 39 Cal.4th at p. 1192.) Courts can presume the Legislature intended PAGA to apply to public employers because that intention is a "necessary implication" of its cross-reference to the Labor Code sections being enforced. (See *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 329.)

Moreover, "courts must avoid statutory constructions that lead to illogical or absurd results." (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 923-924.) It would be illogical for PAGA to be inapplicable to public entities when the very purpose of PAGA was to ensure *greater* enforcement of laws designed to protect employee health and safety. It would be equally illogical to contend that PAGA infringes on a public employer's "sovereign powers" by requiring compliance with Labor Code provisions that they are already obligated to follow.

PAGA section 2699(a) expressly declares that PAGA penalties for Labor Code violations are recoverable "*[n]otwithstanding any* other provision of law …." (§ 2699(a), emphasis added.) Our Supreme Court has held: "'The statutory phrase "notwithstanding any other provision of law" has been called a "term of art" … that declares the legislative intent to override all *contrary* law.'" (*Arias v. Superior Court* ("*Arias*") (2009) 46 Cal.4th 969, 983, citation omitted.) By opening PAGA with this definitive proclamation, the Legislature underscored its intent that PAGA was meant to apply even where other laws purport to exclude its application.

The foregoing distinguishes PAGA from cases like *Wells* or *Johnson*, where the courts determined that substantive statutes like the California False Claims Act ("CFCA," Gov. Code, § 12650 et seq.) or Labor Code sections 510 (overtime pay) and 512 (meal breaks) infringed on a government entity's sovereign powers. (See *Wells, supra*, 39 Cal.4th at pp. 1188, 1197-1198 [noting that procedural history, combined with peculiar features of California False Claims Act's treble damages and penalty provisions, would infringe upon the educational function of local charter schools]; *Johnson*, *supra*, 174 Cal.App.4th at p. 739 [noting that one of the sovereign powers is the power to set employees' compensation].)

By contrast, requiring public employers to operate according to Labor Code provisions they were already subject to does not infringe on their sovereign powers. (See *State v. Marin Municipal Water Dist.* (1941) 17 Cal.2d 699, 704 [holding county was subject to a statute requiring it to move its pipeline as necessary for public safety even though statute did not expressly apply to governmental entities because "the application of [the statute] to municipal water districts *would not result in a limitation upon their otherwise valid power, but would operate only to prevent them from exercising their franchises in a manner contrary to law*" (emphasis added)].)

Enforcing PAGA against public entities does not hinder those entities from, for example, promoting public education or otherwise exercising their sovereign powers; it prevents them from operating in a manner contrary to laws they have been bound by since 1973. (See §§ 3300, 6304.) Neither *Wells* nor *Johnson* confronted such a distinction, nor did they involve a procedural statute that cross-references a substantive statute which expressly applies to the public entity at issue.

Definition of "persons" subject to suit

Public entity defendants may also argue that public entities are not "persons" subject to suit under PAGA. (See § 2699(f) [referring to employers as "person[s]"].) Be prepared to respond to arguments attempting to compare PAGA to the CFCA, which is not applicable to public entities. (Gov. Code, § 12650 et seq.) The CFCA defines covered "person[s]" as "any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust." (Gov. Code, § 12650(b)(9).) Similarly, PAGA states that the word "'person' has the same meaning as defined in Section 18," which states "'Person' means any person, association, organization, partnership, business trust, limited liability company, or corporation." (§ 2699(b).)

Ominous as the similarities in these definitions may appear, there are two key distinctions between the CFCA and PAGA. First, the legislative history of the CFCA contains language demonstrating that the statute was not intended to apply against public entities. The Legislature had included the terms "'*district, county, city and county, city, the state, and any of the agencies and political subdivisions of these entities*,'" as "persons" covered under the CFCA, but then struck these references to government entities prior to enactment.

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(*Wells, supra,* 39 Cal.4th at p. 1191, original emphasis.) The Supreme Court considered the Legislature's removal of these terms a significant indication of its intent to exclude public entities. Nothing in the legislative history of sections 2698 et seq. or section 18 suggests a similar intent.

Second, the CFCA contains treble damages provisions that could impair a government entity's ability to function. The Supreme Court identified this as part of the reason the CFCA is not applicable to public entities: "in light of the stringent revenue, appropriations, and budget restraints under which all California governmental entities operate, exposing them to the draconian liabilities of the CFCA would significantly impede their fiscal ability to carry out their core public missions." (*Wells*, *supra*, 39 Cal.4th at p. 1193.) Notably, these draconian treble damages are not available under PAGA.

Public entity defendants will likely argue that PAGA penalties are similarly draconian, contending that PAGA would increase their statutory liability for Labor Code violations from one plaintiff, filing on behalf of himself, to potentially hundreds of aggrieved employees through the plaintiff's representative action. However, the fact that Labor Code violations can be addressed on a representative basis merely increases the efficiency of enforcement and does not create additional penalties. Without such representative actions, the LWDA would still be able to pursue the same penalties but would have to expend considerably more resources to bring the same claim on behalf of each aggrieved employee, individually. This would be extremely inefficient and a terrible waste of government resources.

Public entity defendants will also argue that the section 2699(f) default penalties are new penalties that they would not have to pay if they were exempt from PAGA. However, recall that the very reason for enacting PAGA was to quell rampant Labor Code violations by (1) adding penalties to Labor Code sections that did not contain penalty provisions and (2) deputizing private citizens to recover penalties where limited government resources would otherwise preclude enforcement.

Significantly, public entity employers can avoid PAGA penalties altogether if they cure certain categories of violation within 33 days of being notified by the employee. (§ 2699.3(c).) Additionally, even if the employer does not or cannot cure and the PAGA action results in a penalty being assessed against the employer, some Labor Code sections permit certain public entities to recover the 75 percent of the penalties (the amount paid to the LWDA) if they timely abate the problems. (See, e.g., § 6434.5(c).)

Government Code section 818 does not apply to civil penalties: *Kizer*

Some public employers have attempted to argue that Government Code section 818 also prohibits civil penalties under PAGA because they are punitive in nature. This position is untenable. "[D]amages which are punitive in nature, but are not simply or solely punitive in that they fulfill legitimate and fully justified compensatory functions, have been held *not* to be punitive damages within the meaning of Government Code section 818." (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 145-151, citations omitted.) In *Kizer*, the California Supreme Court held that Government Code section 818 did not proscribe statutory civil penalties in the Tort Claims Act. (*Ibid.*)

The Court drew some important distinctions between punitive damages and civil penalties to reach this conclusion: "Civil penalties under the Act, unlike damages, require no showing of actual harm per se. Unlike damages, the civil penalties are imposed according to a range set by statute irrespective of actual damage suffered. Moreover, civil penalties, unlike punitive damages, are imposed without regard to motive and require no showing of malfeasance or intent to injure." (*Id.* at p. 147, citations omitted.) *Kizer* also noted that Government Code section 818 should not apply to "statutory civil penalties designed to ensure compliance with a detailed regulatory scheme . . . even though they may have a punitive effect." (*Id.* at p. 146.) "Nowhere in the Tort Claims Act does the Legislature indicate an intention to immunize public entities from monetary sanctions authorized by the Legislature and imposed for failure to observe minimum health and safety standards adopted to protect and prevent injury to patients. Granting immunity to public entities from the penalties would be contrary to the intent of the Legislature to provide a citation system for the imposition of prompt and effective civil sanctions against long-term health care facilities in violation of the laws and regulations of this state." (*Id.*)

Like *Kizer* and the Tort Claims Act, PAGA was passed to "achieve maximum compliance with state labor laws" through the "vigorous assessment and collection of civil penalties." (See Stats. 2003, ch. 906 (S.B. 796), § 1.) Seventy-five percent of the penalties collected go to the LWDA "for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code." (§ 2699(i).) Nowhere in PAGA does the Legislature indicate any intent to immunize public employers from its civil penalties. To the contrary, it plainly indicates the opposite intent by expressly exempting one public entity from the PAGA's default penalty provisions. (§ 2699(f)(3).) That intent was then re-affirmed when the Legislature passed further legislation modifying the disposition of PAGA penalties in cases involving public police and fire departments. (§ 6434.5(c).)

Just as in *Kizer*, it would contravene legislative intent to allow public employers to violate the Labor Code without suffering the same "prompt and effective civil sanction" created by PAGA. Enforcing PAGA against public employers enforces this State's laws and helps protect the public, precisely as the Legislature intended.

Kizer is not an outlier opinion and its holding is not limited to the Long-Term Care, Health, Safety, and Security Act of 1973. The same reasoning was used to uphold civil penalty claims against public entities under the Unruh Civil Rights Act

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in *Los Angeles County Metropolitan Transportation Authority v. Sup. Ct.* (2004) 123 Cal.App.4th 261, 266-267. Civil penalties specified in the Water Code have also been upheld against public entities in at least two other published opinions. (See *State of California v. City and County of San Francisco* (1979) 94 Cal.App.3d 522, 530; *San Francisco Civil Service Association, Local 400 v. Sup. Ct.* (1976) 16 Cal.3d 46, 47-50.)

In each of these cases, the defendants argued that Government Code section 818 should immunize the public entity from civil penalties, and each time the court rejected that contention.

PAGA cross-references the Labor Code sections being enforced

"One 'elementary rule' of statutory construction is that statutes *in pari materia* – that is, statutes relating to the same subject matter – should be construed together." (*Lam*, *supra*, 88 Cal.App.4th at p. 1016, quoting *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 50-51; see also *City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462, 468.) A statute should not be construed "in isolation," it should be read "with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (*People v. Pieters* (1991) 52 Cal.3d 894, 899, quoting *Clean Air Constituency v. California State Air Resources Board* (1974) 11 Cal.3d 801, 814.)

Pursuant to *in pari materia* and the principle that related statutes should be read harmoniously, PAGA's penalty provisions must be interpreted in light of the Labor Code violations being enforced in each case. Thus, when the underlying Labor Code violations alleged apply to public entities, PAGA penalties may be collected for their violation. (See, e.g., §§ 3300, 6304, 6317, 6427, 6428, and 6434.) This is the only way to "harmonize" PAGA's public policy of ensuring "effective" enforcement and the legislative intent to apply PAGA penalties to public entities other than the LWDA with past cases finding public entities immune from prosecution for certain Labor Code sections that unduly infringe on sovereign powers and which otherwise would be swept within PAGA's reach. (*Pieters*, *supra,* 52 Cal.3d at p. 899.)

This principle applies equally to both of PAGA's penalty provisions. First, PAGA provides that any pre-existing civil penalty attached to a Labor Code section may now be recovered by aggrieved employees pursuant to section 2699(a). Thus, determining whether a section 2699(a) penalty may be assessed against a public entity for a Labor Code section with a pre-existing civil penalty provision necessarily requires analysis of whether that Labor Code section applied to public entities prior to PAGA's passage.

Meanwhile, section 2699(f) provides that any "person" who violates a Labor Code section with no pre-existing penalty is liable for default penalties, with "person" defined by section 18. (By contrast, the pre-existing penalty provision found in section 2699(a) contains no reference to "person" or section 18 whatsoever.) Section 18 then defines "person" to include "any person, association, [or] organization …" Reading sections 18 and 2699(f) together, any "person, association, or organization" that violates a Labor Code section with no pre-existing penalty is liable for PAGA's default penalties. One must then refer to the Labor Code section being enforced to determine which "persons, associations, or organizations" can be held accountable for violations of that Labor Code section.

Two examples shed light on the analysis. Section 220 specifically exempts public employees from other provisions of the Labor Code, such as section 201.3. Therefore, a public employer can never be a "person, association, or organization" that violates section 201.3 within the meaning of section 2699(f). Conversely, section 6401 does apply to public employers. (See §§ 3300, 6304, and 6401.) Therefore, a public employer that fails to provide a safe work environment *is* a "person, association, or organization" for purposes of assessing section 2699(f) penalties for violations of section 6401. In that instance, the public employer can be held liable for PAGA default penalties for failure to provide a safe working environment. (See also *Marin*, *supra*, 17 Cal.2d at p. 704 [holding county subject to a statute that defined "person" to include "any person, firm, partnership, association, corporation, organization, or business trust" with no mention of public entities]; *cf.* § 18 [defining "person" for purposes of PAGA default penalties in near-identical terms]; see also Civ. Code, § 51.5 [Unruh Act defines "person" to include "any person, firm association, organization, partnership, business trust, corporation, limited liability company, or company"]; *cf. Los Angeles County Metropolitan Transportation Authority v. Sup. Ct.* (2004) 123 Cal.App.4th 261, 266-267 [Unruh Act civil penalties apply to public entities].)

Public entities may argue that, if the Legislature intended for section 2699(f) penalties to apply to public employers, it would have amended section 18 to expressly refer to public entities. However, such an amendment would make public employers liable for default penalties for statutes they were previously exempt from. (See *Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, 307 [noting the Labor Code is "not a model of uniformity in its references to public employees"].)

By contrast, an interpretation that cross-references the underlying Labor Code section sought to be enforced ensures that public employers are only liable for default penalties when they violate a statute that applies to public entities. This is the only interpretation that comports with *in pari materia* and harmonizes PAGA with the "entire statutory scheme of which it is part."

This is also the only interpretation that harmonizes the literal words of section 2699(f) with the express legislative findings and purpose articulated by the Legislature: (1) to ensure Labor Code enforcement where the State is unable to act due to resource constraints; and (2) to deter rampant Labor Code violations with new penalties where none existed before. (*Iskanian*, *supra,* 59 Cal.4th at 379; *Arias*, *supra*, 46 Cal.4th at pp. 980-981.)

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Conclusion

Fifteen years after PAGA's passage, the time has come for a California appellate court to address directly whether PAGA's protections apply to hundreds of thousands of public employees across the State. These employees are no less vulnerable to wage theft and occupational injury than their private sector counterparts, and the Legislature plainly intended to protect all of California's workers from these violations of law.

Nevertheless, until the issue is resolved by precedent, questions of sovereign immunity will continue to percolate throughout the Superior Courts and at times proponents of immunity may even succeed. Such an arbitrary denial of justice and meaningful labor law enforcement to any segment of the California workforce would fly in the face of PAGA's legislative intent.

More importantly, denial of PAGA protection to public employees would permit and even encourage unscrupulous public employers to continue violating the law with impunity. As Alexander Hamilton noted at our founding and our Legislature reiterated in 2003, without some attendant penalty or punishment California's important workers' rights laws will effectively cease to exist.

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