

# California Supreme Court Ends Recovery of Wages under PAGA via Labor Code § 558 Penalties

A Lexis Practice Advisor® Practice Note by William Jhaveri-Weeks, Jhaveri-Weeks Law



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This article discusses the California Supreme Court's decision in *ZB, N.A. v. Super. Ct. (Lawson)*, 2019 Cal. LEXIS 6629 (Sep. 12, 2019), which handed a significant victory to employers in the ongoing effort to use individual-only arbitration clauses to eliminate group wage claims. At issue was whether employees could recoup underpaid wages referenced in Labor Code § 558 through an action under the California Labor Code's Private Attorneys General Act (PAGA), Cal. Lab. Code § 2698 et seq. The Court answered that question in the negative.

## Background

California's PAGA statute allows plaintiffs to bring claims as representatives of the state of California to seek penalties for Labor Code violations suffered by groups of aggrieved employees. Unlike class actions, PAGA group claims cannot be eliminated through individual-only arbitration agreements. See *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348 (2014). One of the key penalties employees have sought to recover through PAGA is found in Cal. Lab. Code § 558, which deals with penalties for unpaid overtime wages, among other things. Section 558 provides for a "civil penalty" consisting of a small fine for each violation "in addition to an amount sufficient to recover underpaid wages." Until the *ZB* decision came down, employee advocates relied on the language just quoted to recover underpaid wages through PAGA for

groups of employees in various situations, including where arbitration agreements had eliminated enforcement through class or collective actions. Whereas most PAGA penalties are split between the state (75%) and the affected employees (25%), wages recovered under Section 558 are "paid to the affected employee" in full. See Lab. Code § 558(a)(3).

In *ZB*, the Court concluded that Section 558's reference to an "amount sufficient to recover underpaid wages" was not part of the "civil penalty" in Section 558, and therefore not something that employees can collect via PAGA. In the wake of a recent line of U.S. Supreme Court decisions upholding arbitration agreements that ban employees from bringing class and collective actions, this decision has now eliminated PAGA as one of the few remaining tools for recovering unpaid wages on a group basis.

## Initial Guidance

The most obvious ramification of the Court's decision is that arbitration agreements will be even more effective at preventing enforcement of the wage laws on a group basis. But there are other effects. Previously, PAGA cases could be brought to recover wages when a class action was, for various reasons, not an available vehicle—for example, a plaintiff could bring suit under PAGA on behalf a group of employees whose duties were not sufficiently similar to meet the predominance requirement, or when the group of employees did not meet the numerosity requirement. In such cases, collecting wages through PAGA fulfilled the purpose of PAGA, which is to deputize citizens to enforce the wage laws on behalf of groups of aggrieved employees when the Labor Commission lacks the resources to do so. As a result of the *ZB* decision, such wages can no longer be recovered through PAGA.

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## Annotated Forms

- [Arbitration Agreement \(Mutual Agreement to Arbitrate Employment-Related Disputes\) \(CA\)](#)
- [Arbitration Clause for Employment-Related Claims \(CA\)](#)

## Secondary Sources

- California Employment Law § 5.40
- Labor & Employment in California § 2-11

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