Bounty Enforcement and the Construction Industry:
Why PAGA-Style Laws Create Disproportionate Risk for Contractors

By Trent Cotney
Senior Fellow, National Construction Policy Institute

Introduction

Worker protection is a core obligation in the construction industry. Contractors must pay employees accurately, maintain compliant records, and satisfy overtime and final-pay obligations. These duties carry special significance in construction because employees perform demanding work in environments defined by safety risk and changing site conditions.

The central policy question is not whether labor standards should be enforced. They should be. The more difficult question is how enforcement should be designed. A well-structured system should deter wage theft, protect employees from retaliation, and encourage employers to correct violations promptly. A poorly structured system can convert technical compliance defects into high-value representative litigation even when the underlying employee harm is limited or curable.

California's Private Attorneys General Act, commonly known as PAGA, illustrates this tension. PAGA authorizes an aggrieved employee to pursue civil penalties for Labor Code violations on behalf of the employee, other aggrieved employees, and the State of California. The statute therefore delegates a portion of the State's enforcement authority to private litigants, subject to statutory notice and procedural requirements.

California substantially amended PAGA in 2024 through Assembly Bill 2288 and Senate Bill 92. The reforms changed penalty allocation, expanded cure procedures, limited the scope of claims to violations personally experienced by the claimant, subject to a narrow statutory exception involving certain qualifying nonprofit legal-aid organizations, and confirmed judicial authority to manage representative claims. The reforms did not repeal PAGA, but they reflected a legislative judgment that the prior enforcement structure required additional safeguards.

How PAGA Operates

PAGA is codified at California Labor Code sections 2698 through 2699.8. A claimant does not merely seek individual unpaid wages. The claimant seeks civil penalties tied to alleged Labor Code violations after satisfying the statutory notice process.

Under the current statute, recovered civil penalties generally are distributed 65 percent to the Labor and Workforce Development Agency and 35 percent to aggrieved employees. A prevailing employee may also recover reasonable attorney’s fees and costs. Courts must review and approve PAGA settlements.

This structure creates litigation economics that differ from a conventional wage claim. A traditional wage claim usually focuses on amounts allegedly owed to a particular employee. A PAGA action may aggregate alleged violations across multiple employees and pay periods, so potential exposure can grow through repetition even when the underlying violation is technical.

The Enforcement Design Problem

Private enforcement has a legitimate place in labor policy. Public agencies operate with finite resources, employees may hesitate to report violations, and some employers intentionally violate wage laws. A purely public enforcement model may fail to reach every instance of misconduct.

Even so, enforcement incentives should align with compliance outcomes. A sound system should reward correction, penalize intentional misconduct, and compensate employees who suffered actual harm. It should not primarily reward the discovery of curable technical errors when employees received the wages owed.

PAGA-style enforcement can shift emphasis from correction to leverage. A missing wage-statement field can recur each pay period. A payroll coding issue can affect numerous employees. A break-recording defect can appear across projects. The resulting penalty demand may become disproportionate to actual wage loss, particularly when attorney fees and defense costs influence settlement value.

Why Construction Warrants Special Consideration

Construction presents practical and legal conditions that differ from many fixed-location workplaces. Crews may report to a company yard on one day and directly to a project on the next. Weather, safety concerns, site access restrictions, and owner-directed schedule changes can alter work hours with little notice.

These conditions affect wage-and-hour compliance. Meal and rest period compliance requires effective field supervision. Timekeeping depends on accurate capture of work outside an office environment. Travel-time rules require careful classification. Reimbursement obligations require consistent documentation. Final-pay obligations can become complicated when project-based employment ends quickly.

Tiered contracting adds another layer of complexity. A general contractor may coordinate the project, a subcontractor may direct its own crew, a lower-tier subcontractor may supply labor, and a staffing company may participate. The workforce may include union and nonunion employees, public and private work, and prevailing-wage obligations. These overlapping duties create compliance friction even for responsible employers.

California law also contains a construction-specific PAGA exemption for certain employees covered by qualifying collective bargaining agreements. Labor Code section 2699.6 applies only when the agreement satisfies detailed statutory requirements, and the exemption remains in effect through January 1, 2038. Its existence confirms that the Legislature has recognized construction-specific considerations within PAGA.

Common Construction Claim Theories

PAGA claims in construction often arise from recurring field conditions. Meal-period allegations may involve late or shortened breaks, missed premiums, or incomplete records. Rest-period allegations may challenge whether field crews had a practical opportunity to take breaks. Off-the-clock theories may involve loading trucks, gathering materials, or cleaning work areas.

Travel and reporting-time claims can involve yard-to-jobsite travel, remote work locations, or access requirements. Expense reimbursement claims may involve tools, cell phones, mileage, uniforms, and job-related supplies. Wage-statement claims may involve employer names, pay-period dates, rates, hours, deductions, and wages earned. Final-pay claims may arise when employment ends after a project or seasonal slowdown.

These categories reflect real legal obligations. The policy concern is proportionality. Enforcement should distinguish intentional wage theft and repeated misconduct from technical or promptly corrected errors.

Settlement Pressure and the 2024 Reforms

PAGA litigation can create substantial pressure before a court reaches the merits. A contractor must evaluate defense costs, potential penalties, attorney fees, management disruption, insurance consequences, and reputational harm. For small and mid-sized contractors operating on thin margins, that pressure can influence settlement decisions even when defenses exist.

The 2024 reforms sought to rebalance these incentives. They increased the employee share of recovered penalties from 25 percent to 35 percent, created reduced-penalty treatment for employers that take reasonable compliance steps, expanded cure opportunities, established more structured cure procedures for smaller employers, authorized early evaluation procedures for larger employers, strengthened standing requirements, and confirmed that courts may limit the scope of claims or evidence to ensure effective case management.

The reforms improve the statute, but they do not eliminate the underlying policy concern. Representative penalty systems can still create disproportionate leverage when technical violations repeat across employees and pay periods. Other states considering PAGA-style laws should incorporate stronger safeguards from the outset rather than replicate California's pre-2024 model.

The Risk of Copycat Laws

Other states may view PAGA-style enforcement as a way to expand labor-law enforcement without substantially increasing agency staffing. The model can appear attractive because it places enforcement authority in the hands of employees and private counsel.

For construction, however, the risks are substantial. Contractors already operate within a dense regulatory framework that includes wage-and-hour law, occupational safety, workers' compensation, immigration compliance, licensing, lien law, procurement rules, prevailing-wage obligations, apprenticeship standards, and insurance requirements. Adding broad private-penalty enforcement may increase compliance costs without producing proportionate improvements in jobsite outcomes.

Multistate contractors would also face fragmented rules. Smaller contractors could face higher litigation risk, owners could see higher bids, public agencies could pay more for infrastructure, and employers could reduce hiring or avoid certain markets because of penalty exposure.

A Better Enforcement Model

Policymakers should adopt a compliance-first enforcement model that protects workers while reducing incentives for abusive or disproportionate litigation.

First, states should provide meaningful notice and cure rights. Employers should receive a reasonable opportunity to correct specified technical violations, pay wages and interest where required, and revise policies and records before representative litigation proceeds.

Second, states should create a good-faith compliance safe harbor. Employers that conduct payroll audits, train supervisors, maintain lawful written policies, and promptly correct errors should receive meaningful penalty protection.

Third, representative claims should require a concrete connection between the named claimant and each category of alleged violation. California's 2024 reforms moved in this direction by requiring the claimant to have personally experienced the alleged violations pursued on behalf of others.

Fourth, penalty rules should account for culpability. Intentional wage theft, fraud, retaliation, and repeated misconduct should carry serious consequences. Good-faith mistakes and technical defects should receive different treatment, particularly when employees suffered no wage loss.

Fifth, courts should have strong manageability authority. A representative claim should not proceed in a form that cannot be tried fairly because it spans numerous jobsites, supervisors, projects, pay periods, and materially different factual circumstances.

Sixth, enforcement agencies and courts should consider construction-specific realities, including weather, safety stoppages, project sequencing, and trade coordination. These factors do not excuse violations, but they may affect culpability and proportionality.

Seventh, attorney-fee awards should remain tied to the actual benefit obtained, the public value of the litigation, and the seriousness of the violations proved.

Recommended NCPI Policy Position

NCPI supports strong labor enforcement while opposing private-penalty systems that convert technical compliance issues into disproportionate litigation risk. States should target wage theft, retaliation, intentional misclassification, fraud, and repeat violations. They should not create enforcement structures that reward mass filing, boilerplate notices, and settlement leverage disconnected from actual employee harm.

Any private-enforcement statute should include meaningful cure rights, good-faith safe harbors, and active agency oversight. This approach protects workers, creates a path for responsible employers to correct mistakes, preserves serious penalties for bad actors, and reduces litigation distortion.

Conclusion

PAGA-style laws raise serious concerns for construction because they can shift enforcement from correction toward aggregation and settlement pressure. Construction operates through mobile crews, changing project conditions, safety constraints, tiered contracting, and field-driven schedules. Compliance remains essential, but enforcement should account for the environment in which those obligations arise.

The better model is not weak enforcement. It is targeted enforcement that punishes intentional wage theft, protects employees who suffer actual harm, encourages employers to audit and cure, and avoids converting curable technical mistakes into disproportionate representative claims.

Worker protection and contractor fairness are compatible policy goals. A well-designed enforcement system can achieve both while preserving the ability of responsible contractors to build, hire, train, and compete.

Sources Reviewed for Fact Check

- California Labor Code sections 2698-2699.8, including current sections 2699, 2699.3, and 2699.6.
- Assembly Bill 2288 (2024), chapter 44, and Senate Bill 92 (2024), chapter 45.
- Assembly Bill 1034 (2024), chapter 803, concerning the construction-industry collective bargaining exemption.
- California Governor's Office, “Governor Newsom Signs PAGA Reform,” July 1, 2024.
- California Labor and Workforce Development Agency, Private Attorneys General Act, frequently asked questions.

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