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Governor Brown Signs Industry Supported PAGA Reform Bill

In a major victory for the union construction industry, Governor Brown has signed AB 1654 which we were strongly supportive of. This measure waives the California Private Attorneys General Act (PAGA) within the construction industry for employees and employers covered by a valid Collective Bargaining Agreement (CBA) who agree to waive PAGA in the CBA.

PAGA provides employees with a private right of action against a California employer in order to collect penalties on behalf of the state's Labor and Workforce Development Agency (LWDA) for labor code violations. It is technically a type of qui tam claim. PAGA requires that 75 percent of any penalties collected be paid to the LWDA, with the remaining 25 percent distributed to the aggrieved employees. More significantly, it also allows for attorneys to recoup their fees and costs in a successful suit.

The exposure PAGA placed on our contractors was significant and the need for reform was real. The United States Supreme Court recently issued a decision impacting class action waivers that resulted in upholding employment arbitration agreements, but the California Supreme Court and the Federal Ninth Circuit Court of Appeals have both previously held that an employee cannot waive a future PAGA claim vis a vis an arbitration agreement or class action waiver. AB 1654 provides clarity in this area for the union construction industry.

Specifically, AB 1654 waives PAGA claims (authorized under California Labor Code Sections 2698-2699.5) related to the Construction Industry for employers and employees that engaged in a CBA that expressly provides for:

- Wages, hours of work, working conditions, premium wage rates for overtime, and provides an hourly wage of not less than 30% more than the minimum wage.
- A grievance and binding arbitration procedure to redress violations.
- A waiver that addresses the requirements of PAGA in clear and unambiguous terms and authorizes the arbitrator to award any and all remedies otherwise available under PAGA (paying penalties to the state is specifically banned under the new law).

We cannot stress enough how significant of a victory this new law is for the union construction industry. AB 1654 strengthens and upholds the sanctity of CBAs. The measure acknowledges that CBAs, through grievance procedures, provide for a thorough, consistent and fair process to resolve disputes. Most importantly, AB 1654 is an excellent example of labor and management working together to improve and strengthen the union construction industry.

We would like to thank all the contractors who provided testimony of the need for reform, and helped pass this important bill for our industry.