



# **The Impact of PAGA on Business Viability and Employment Security**

*Comparing the relationship between PAGA  
settlements and WARN notice issuance*

# Executive Summary

California now leads the nation in mass layoffs. Between high taxes and anti-business policies, California businesses are laying off millions of workers each year, with no sign of slowing down anytime soon. Recent research points to the Private Attorneys General Act as a driving force.

The Private Attorneys General Act (PAGA) is a unique California statute that allows employees to bring lawsuits against their employers on behalf of themselves, other employees, or even the state of California, for any violation of the state's 1,000+ page labor code. PAGA lawsuits have significantly increased since the law was implemented, targeting many small-and medium-sized businesses, often for minor offenses.

To measure the impact of PAGA lawsuits, the California Business and Industrial Alliance set out to compare the relationship between businesses who have been subject to PAGA litigation with those who have issued WARN notices, which are required for businesses who plan to lay off 50 or more employees. Our research found the following:

- Businesses who were served PAGA lawsuits were 258 times more likely to issue WARN notices in FY 21/22, and 126 times more likely in FY 22/23, respectively.
- The average PAGA settlement for these employers was almost \$4 million in the past fiscal year, with an average attorney fee of over \$1 million.

## Introduction

Ongoing study of the outcomes of litigation arising under Section 1298, et seq. of California's Labor Code, the Private Attorneys General Act of 2004, has raised the question of whether there is a relationship between PAGA lawsuits and settlements and "WARN" notices issued by employers. This study has been conducted to explore that issue, focusing on the issuance of these notices as a measure of negative impacts on the viability of businesses and the retention of their employees.

The Cal-WARN Act, California Labor Code section 1400 et seq., requires employers with 75 or more employees to issue a written notice to employees when 50 or more are to be laid off by their employer within any 30-day period. The notice must be issued 60 days in advance of the layoff. This requirement is also triggered when a business is terminating operations or moving its operations to a location 100 miles or more from its current location (Labor Code section 1400.5).

This study compares the incidence of WARN notice issuance by employers subject to PAGA litigation to the incidence of WARN notice issuance by employers not subject to PAGA litigation during FY 21/22 and 22/23. To make this comparison, the research team first gathered all WARN notice data from FY 21/22 and 22/23 from the Employment Development Department (EDD), which reveals the identities of employers who have issued them, and matched this information to data from the Labor and Workforce Development Agency (LDWA) identifying employers who were subject to PAGA awards or proposed settlements.

In broad terms, the data indicates that employers who are subject to PAGA awards or proposed PAGA settlements are more likely to issue WARN notices by many orders of magnitude. See the attached data below and analysis following for further detail.

	FY 2021/2022	FY 2022/2023
(a) Total number of employers in the state in 2021 <b>Q4: 1,264,666 (employee total)<sup>1</sup></b>	<	<
(b) Total number of WARN notices issued	597	888
(c) Total number of employers who issued WARN notices <sup>2</sup> (All WARN employers)	285	569
(d) All WARN employers as a percentage of all employers in the state (ALL WARN employers/employee total)	0.025%	0.05%
(e) Number of employers in the state subject to a proposed PAGA settlement <sup>3</sup>	2,900	3,165
(f) Number of employers in the state not subject to a proposed PAGA settlement, or non-PAGA settlement employers (employee total – 2,900 for FY 2021/2022 and employee total – 3,165 for FY 2022/2023)	1,261,501	1,261,776
(g) Total number employers issuing Warn notices who were subject to PAGA awards (PAGA-WARN employers)	71	136
(h) All WARN employers – PAGA WARN employers, or “Non-PAGA WARN employers”	114	433
(i) Non-PAGA WARN employers as a percentage of Non- PAGA settlement employers (114 / 1,261,766 for FY 2021/2022 and 433 / 1,261,766 for FY 2022/2023)	0.0093%	0.034%
(j) PAGA WARN employers as a percentage of all employers subject to proposed PAGA settlement (71 / 2,900 for FY 2021/22 and 136 / 3,165 for FY 2022/2023)	2.4%	4.3%
(k) Affected employees	988,782	3,215,342
(l) WARN with PAGA cases total settlement amount	\$242,662,706	\$823,710,861
(m) WARN with PAGA cases average settlement amount	\$2,637,638	\$3,941,200
(n) WARN with PAGA cases average attorney fee	\$677,565	\$1,223,564

1 Data acquired from records maintained by DIR and EDD. Data analysis reviewed by Baker & Welsh, LLC.

2 Note that lines (b) and (c) differ because one employer can issue multiple notices.

3 Data from LWDA response to Public Records Act request by Baker & Welsh, LLC. This number is “proposed PAGA settlements” as documented by LWDA, which would be expected to closely match the number of finalized awards.

# Discussion

The central question answered by this data is whether being subject to a PAGA lawsuit increases the likelihood that a company will issue a WARN notice. The issuance of a WARN notice is chosen as the event of focus because it serves as a useful proxy for a company and its employees experiencing mass layoffs as a result of the negative impacts from PAGA litigation or the immediate threat of it.

## Findings

- The number of employers generally issuing a WARN notice as a percentage of all employers in the state was 0.025 percent and 0.5 percent respectively in FY 21/22 and FY 22/23. See lines (a), (b), (c), and (d) in the table.
- Employers subject to a PAGA settlement had a 2.4 percent and 4.3 percent likelihood respectively in FY 21/22 and FY 22/23 of issuing a WARN notice (lines (m) and (n)) while employers not subject to a PAGA settlement had a likelihood of 0.0093 percent and 0.034 percent respectively in FY 21/22 and FY 22/23 of issuing a WARN notice (lines (k) and (l)).
- The number of employees subjected to these notices was approximately 1 million and 3 million in FY 21/22 and FY 22/23, respectively.
- These data indicate that involvement in PAGA litigation has significant negative impacts on the viability of businesses subject to the litigation and directly leads to loss of employment by their employees. Given the fact that WARN notices are issued when there is a “mass layoff,” which is defined by Labor Code section 1400 to be a layoff of 50 or more employees, or when a company is going out of business, there is no doubt that PAGA litigation can cause serious financial hardship for business owners and their employees. It should also be understood that there may be layoffs of fewer than 50 employees resulting from PAGA litigation, and these outcomes are not captured by WARN notice data.

## Conclusion

PAGA litigation clearly has substantial negative impacts on the viability of businesses and the employment security of their employees, as indicated by the large disparity of WARN notice issuance by employers not subject to PAGA litigation and WARN notice issuance by employers subject to PAGA litigation.

We note that there are three categories of data we have not obtained to conduct this analysis. The first is the number of businesses that issued WARN notices due to a 100- mile relocation, as opposed to going out of business or having to engage in a mass layoff.

Given the likely small numbers of 100-mile relocations being the trigger for issuance of WARN notices, as well as the likelihood that some of these relocations may involve moving out of state to pursue a more profitable business environment, we believe the absence of this category of data is not likely to have a

significant impact on the conclusion that WARN notices provide a reliable indicator of PAGA's negative impact on businesses and the resulting loss of jobs by their employees.

The second data category not obtained for analysis here is the number of negative situations not captured by Labor Code 1400.5, including negative impacts on employers with fewer than 75 employees and layoffs of fewer than 50 employees in a 30-day period.

The third data category not obtained for analysis here is the number of PAGA settlements that have occurred before litigation was initiated. These settlements are not recorded in the state's database. It is likely that pre-litigation settlements occur under the threat of a PAGA lawsuit just as they do when businesses are threatened with other types of lawsuits, and these PAGA settlements are likely to be detrimental to the viability of businesses and the job security of their employees in the same way PAGA litigation is.

In conclusion, this study demonstrates that there is substantial and compelling evidence that PAGA has unintended consequences that are damaging to the California economy and contribute to the loss of jobs by California workers.

