



presents

14th Annual Advanced Wage and Hour Conference

What Happens When PAGA Cases Go to Trial?

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Speakers:

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Conference Reference Materials

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MCLE SELF-STUDY:

PAGA AT 20: WHAT HAPPENS WHEN CASES GO TO TRIAL?

Attorneys largely overlooked the Private Attorneys General Act (PAGA)¹ the first few years after it became law. According to data from the California Department of Industrial Relations, just four PAGA notices were submitted in 2004, the year PAGA went into effect.²

In 2011, the U.S. Supreme Court decided *AT&T Mobility LLC v. Concepcion*,³ holding that the Federal Arbitration Act⁴ preempted a California rule that invalidated certain class action waivers in arbitration agreements. Employers responded by increasing the use of mandatory arbitration clauses that waived employees' rights to file or participate in class action lawsuits. Employees and their lawyers responded by turning to PAGA—one of the only tools left to prosecute representative actions.

In 2013, 444 PAGA notices were submitted; the next year, that number jumped ten-fold to 4,134. In the second decade of PAGA's existence, between 2014 and 2023, there have been an average of more than 5,500 PAGA notices per year—reaching a high of almost 8,000 in 2023.

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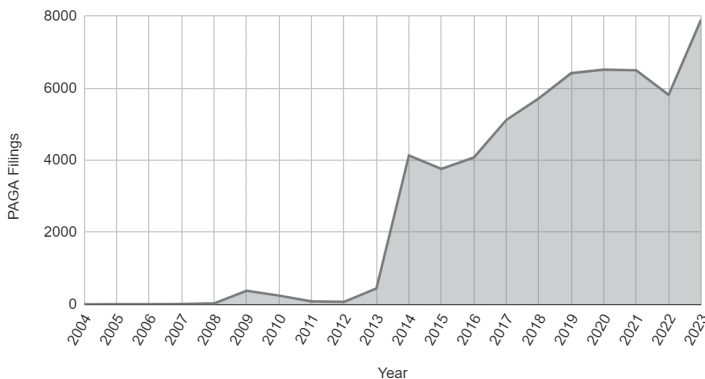
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PAGA Filings per Year



IN 2013, 444 PAGA NOTICES WERE SUBMITTED; THE NEXT YEAR, THAT NUMBER JUMPED TEN-FOLD TO 4,134.

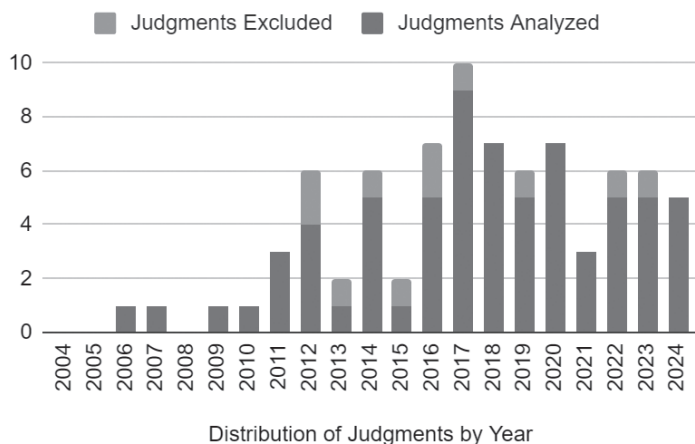
Despite the increased prevalence of PAGA actions, relatively few have gone to trial, and most practitioners seem to have a limited understanding of what happens when they do. This study seeks to fill that information gap so that practitioners and parties can base their decisions on empirical, rather than anecdotal, evidence.

A NOTE ON METHODOLOGY

The authors collected 78 judgments in PAGA actions that have gone to trial over the last 20 years. In addition, we reviewed pre-trial and post-trial briefing, statements of decision, orders on attorney fees, as well as appellate decisions and also interviewed trial counsel to obtain additional information.

The judgments range from 2006 to 2024, peaking in 2017. While the distribution of judgments by year suggests that additional judgments likely exist, particularly after 2017, the authors are confident that the summary statistics reported here provide significant coverage of the population of PAGA trials and significant insight into the way in which trial courts have handled these cases.

Judgments



From the 78 judgments obtained, the authors excluded four default judgments and one uncontested matter where

the defendant did not appear for trial. In all but one of those cases, the trial court awarded 100% of the penalties requested, rendering the results of little analytical value. In addition, we excluded three matters that lacked sufficient information for meaningful analysis. In total, then, the data set analyzed included 70 judgments.

A unique question arose as to how to address cases that went to trial a second time on remand after appeal—that is, whether to include both trial results, or only the final judgment entered after remand. While either method would be defensible, we chose a middle path. In each of these cases, the plaintiffs won, the judgment was reversed in part on appeal, and the plaintiffs won on remand. We counted these cases as one plaintiff win each, as counting them twice would have inflated the number of plaintiff wins. However, on issues such as appellate reversal rates, stacking, and subsequent penalty rates, we analyzed each result separately.

HOW OFTEN DO PLAINTIFFS WIN?

It is difficult to analyze win rates without first determining what a PAGA win looks like. As noted, results in several uncontested cases were excluded as having little analytical value.

However, looking at results in contested matters yielded far more useful data. In contested matters, trial courts found labor code violations in 49 of the 70 cases in the data set, or 70%. However, courts declined to award PAGA penalties in eight of those cases, which cannot be considered plaintiff wins in any real sense. Accordingly, courts awarded civil penalties in 41 of the 70 cases, or 58.6%.

WHAT CLAIMS PREVAIL MOST OFTEN?

Certain types of cases definitely resulted in higher win rates for plaintiffs than others. Stand-alone wage statement violation cases⁵ are undefeated, with 12 plaintiff wins and no losses. Retaliation cases brought under PAGA have resulted in two wins and one loss. In the middle of the pack, cases involving breaks tend to favor employees, with 11 wins and three losses. And cases involving multiple forms of violations—including wage loss, break violations, and

unreimbursed expenses—are closer to break-even, with nine wins for employees and six losses. Wage loss cases also tended to favor employees, with seven wins and three losses.

A look at cases that include wage claims, whether alone or in combination, revealed:

- three off-the-clock losses and one win;
- two misclassification as independent contractor wins and one loss;
- three misclassification as exempt losses and one win;
- four unpaid wage wins and two losses;
- six unpaid overtime wins and two losses;
- one unpaid commission win; and
- three rounding losses, with two reversed on appeal.

Most surprising is the string of losses in suitable seating cases, with five losses and no wins. However, there are numerous reported settlements of suitable seating cases in which both sides determined it was in their best interests to reach a resolution.

Another area examined is what types of cases garner the highest penalty awards. This is where section 226 starts to look less promising for plaintiffs. The awards for paystub violations were low: \$5.20 to \$55 per pay period. As evidenced in the relevant judgments, judges took into consideration the “willfulness” of the employer in deciding to exercise their discretion to lower the awards—evaluating such factors as whether there was evidence of ill motive, whether employees had made complaints, difficulties encountered when trying to “fix” wage statements, and lack of “injury.” In one case, the judge considered a separate class settlement of statutory penalties to lower the award of civil penalties in a PAGA-only case.

The higher penalty awards have tended to come in cases with multiple, disparate violations. For example, the court in the 2021 case of *Bernstein v. Virgin America*⁶ awarded \$406 per pay period for violations involving unpaid wages, meal and rest breaks, and wage statements. However, after an appeal, that per pay period award came out to \$174.25.

DO CASES INVOLVING INDIVIDUAL OR CLASS CLAIMS DIFFER?

In the 17 cases in which the employee tried class and PAGA violations, liability was found, and penalties were awarded, in 78% of them. Liability was found in class+PAGA cases involving unpaid wages (three), breaks (four), wage statements (six), and violation of a living wage ordinance

(one). On the other hand, employer wins included breaks (two), day of rest (one), and misclassification as exempt (one).

In the 32 cases in which employees brought individual claims with PAGA representative claims, liability was found, and penalties were awarded, in 65% of them.

Employee wins included exemption misclassification (three), combination cases (five), section 226 (four), breaks (four), unpaid wages (two), independent contractor misclassification (two), and retaliation (two).

Employer wins included exemption misclassification (two), combination cases (two), unpaid wages (one), misclassification as independent contractors (one), and retaliation (one).

Surprisingly, in the 17 PAGA-only cases, 74% resulted in a defense verdict. Employer wins included breaks (two), combination cases (three), suitable seating (five), and unpaid wages (one). Most of these verdicts appear to be a product of failure of proof. Employee wins in PAGA-only cases include breaks (two), combination cases (two), and section 226 (two).

WHAT PENALTIES ARE REQUESTED AND AWARDED?

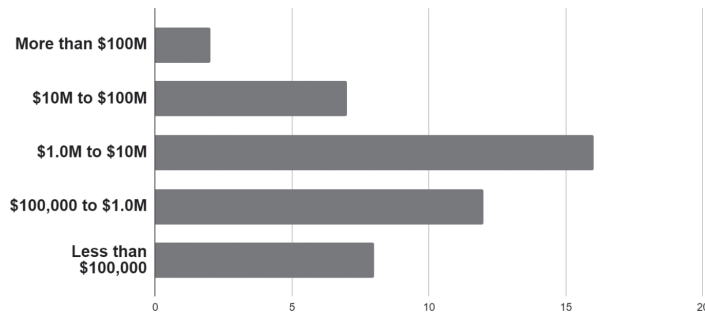
In the 70 judgments analyzed, the median request was approximately \$2.3 million. In other words, half of the plaintiffs’ requests were higher than \$2.3 million, and half were lower than \$2.3 million. The median amount awarded by the trial court was \$150,000, or 6.6% of the median request.⁷

The authors believe that the median figures are more useful than the average, also known as the mean, because a small number of very large cases pushed the average or mean dramatically higher than the median. The mean request was almost \$13.7 million, and the mean award was just over \$3 million.

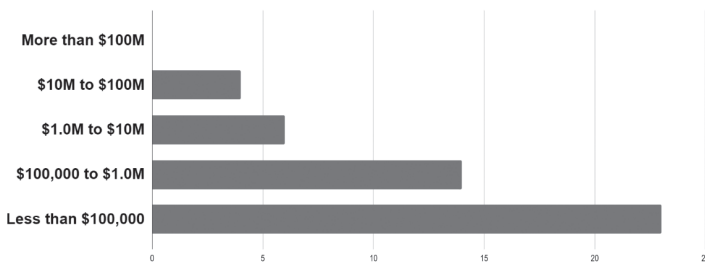
ANOTHER AREA EXAMINED IS WHAT TYPES OF CASES GARNER THE HIGHEST PENALTY AWARDS. THIS IS WHERE SECTION 226 STARTS TO LOOK LESS PROMISING FOR PLAINTIFFS.

The following charts show the reason for this disparity between the median and mean values. Approximately half of the cases (22 out of 45) included requests lower than \$1.3 million, and approximately half (23 out of 45) include requests above \$1.3 million, but two cases with requests well over \$100 million push the mean to almost \$14 million.⁸

Amounts Requested



Amounts Awarded



Similarly, 23 of the 47 awards are less than \$150,000, 23 out of 47 are more than \$150,000, and one award was exactly \$150,000, making the median \$150,000. However, three very large awards: two for \$25 million and one for \$54 million—all of which were reversed on appeal—raise the mean to over \$3 million.⁹

Judgments that were reversed on appeal were included here because the purpose of the study was to determine what happens at the trial court level. Eliminating these cases would have reduced the data set and eliminated useful information on trial court wins and losses, stacking, reductions, and appellate reversal rates, among others.

HOW MUCH IS REQUESTED AND AWARDED PER PAY PERIOD?

Evaluating results at trial requires an understanding of the amounts requested and awarded per pay period, which was difficult to discern. First, nearly 40% of all trials were bifurcated in some manner—for example, liability, then penalties; or class tried to jury, then PAGA tried to court.¹⁰ Where plaintiffs lost in the first phase of trial, the trial briefs, statements of decision, and judgments most often do not include pay period counts.

Second, even in cases that were tried on penalties—either because they were not bifurcated or because the plaintiff won on liability in a bifurcated trial—pay period data was difficult to determine. Ultimately, we were able to discern the number of pay periods in 36 of the plaintiffs’ requests and in 41 of the trial court awards.¹¹

Based on that data, the median case had just under 4,600 pay periods, and the median request was approximately \$325 per pay period. Where courts found labor code violations and awarded penalties, the median number of pay periods involving violations was just over 3,400, and the median award was \$100.00 per pay period.

HOW OFTEN DO TRIAL COURTS REDUCE PENALTIES?

Trial courts exercised their discretion to reduce penalties in 27 of the 49 cases (55%) where violations were found. On average, when courts did reduce penalties, they cut them by 77%. This includes cases where penalties were reduced to zero, as discussed below. Overall, looking at all cases in which courts awarded penalties, the average reduction was 46%. The figures cited above for amounts requested and awarded per pay period take these reductions into account.

The extent of the reductions varied widely, depending on the circumstances. Several examples include:

- *Thurman v. Bayshore Transit Management, Inc.*,¹² affirming 30% reduction from \$50 to \$35 per pay period in action alleging meal and rest period violations;
- *Parr v. Golden State Overnight Delivery Services, Inc.*,¹³ reducing section 226.3 penalties by 94%, from \$250 to \$15 per wage statement, in action based on noncompliant statements;
- *Carrington v. Starbucks Corp.*,¹⁴ 90% reduction from \$50 to \$5 per pay period under section 558 in action alleging meal period violations; and
- *Gola v. University of San Francisco*,¹⁵ affirming 85% reduction in penalties for violation of section 226.

HIGHER PENALTY AWARDS HAVE TENDED TO COME IN CASES WITH MULTIPLE, DISPARATE VIOLATIONS.

DO COURTS FIND LIABILITY, BUT DECLINE TO AWARD PENALTIES?

California Labor Code section 2699(e)(2) expressly authorizes courts to award a lesser amount than the maximum civil penalty, and the data above show that courts often exercise that discretion.

In addition, in the data set, courts found liability, but did not award any civil penalties in five cases. In two of those cases, courts found violations of section 226 but deemed them not to be willful. In one, the court found the employees did not prove the employer had the ability to pay penalties. One court found the employees did not sufficiently prove the number of violations, despite proving those violations had occurred. In the final case, the court found the required pre-filing notice to the Labor & Workforce Development Agency (LWDA) to be insufficient.

However, three appellate decisions suggest the court does not have discretion to reduce penalties to zero when liability is established.¹⁶ In the most recent case, *Bernstein v. Virgin America*, decided in 2019, the court underscored that “the California Courts of Appeal have suggested that a ‘trial court lacks discretion to reduce a civil penalty to zero.’”

DO TRIAL COURTS STACK PENALTIES?

“Stacking” is a term that often comes up, with plaintiffs’ lawyers creatively finding ways to yield four or five separate penalties from one missed meal period and defense attorneys vigorously arguing that stacking penalties is not allowed under PAGA no matter how many alleged distinct violations occur in a single pay period.

Trial courts have stacked PAGA penalties in two different ways.

First, and perhaps less controversial, courts have stacked PAGA penalties by awarding more than one civil penalty for an aggrieved employee during the same pay period for independently wrongful conduct, or Type 1 Stacking. An example is a court awarding a civil penalty for an employee who is not provided a meal period during a pay period and another penalty for the employer’s failure to pay overtime on a separate occasion during the same pay period. These are separate labor code violations arising from distinct and independent alleged wrongs.

The second form of stacking is more hotly contested and arises from what are referred to as derivative claims. An example: An employee is forced to work off the clock. Plaintiffs then argue that this single wrongful act should

PLAINTIFFS REQUESTED STACKED PENALTIES, IN ONE FORM OR ANOTHER, IN 33 OF THE 70 CASES IN THE DATA SET, OR 47%.

result in multiple, derivative penalties because the off-the-clock work results in unpaid overtime, an inaccurate pay stub, and 203 penalties at the termination of employment. Type 2 Stacking occurs when multiple penalties are awarded for a single course of conduct.

Plaintiffs requested stacked penalties, in one form or another, in 33 of the 70 cases in the data set, or 47%.

In six cases (8.6% of all cases, 12.2% of the cases where courts awarded penalties, and 18.2% of the cases in which there was a request for stacked penalties), trial courts awarded separate penalties for separate courses of conduct, which we dubbed Type 1 Stacking. For example, in *Monaghan v. Telecom Italia Sparkle of N.A., Inc.*,¹⁷ the trial court found for the plaintiff on individual PAGA claims, awarding separate PAGA penalties as follows: \$7,500 for misclassification under section 226.8; \$100 for failure to provide documents under section 432; \$5,250 for wage statement violations under section 226.3; and \$2,400 for failure to pay without discount under section 212.

In two cases (2.8% of all cases, 4% of the cases where courts awarded penalties, and 6% of the cases in which there was a request for stacked penalties), courts awarded multiple penalties for a single course of conduct, which we dubbed Type 2 Stacking. For example, in *Amaral v. Cintas Corp. No. 2*,¹⁸ the trial court found that the employer failed to pay employees the wages required under a local living wage ordinance. It awarded penalties under California Labor Code section 210 (penalty for violation of section 204, timely payment of wages during employment), section 225.5 (penalty for violation of section 2, secretly paying less than designated wage scale), and section 227.3, (payment of vested vacation pay)—all based on this single course of conduct.

In another 10 cases (14.3% of all cases, 20.4% of the cases where courts awarded penalties, and 30.3% of the cases in which there was a request for stacked penalties), trial courts awarded both penalties for separate courses of conduct and penalties for a single course of conduct. This often also included derivative penalties, particularly for failure to provide accurate wage statements under section 226.

WHEN COURTS DID REDUCE PENALTIES, THEY CUT THEM BY 77%.

For example, in *Bernstein v. Virgin America, Inc.*, the district court awarded separate penalties for failure to pay overtime, failure to provide legally compliant meal periods, failure to provide legally compliant rest periods, failure to provide accurate wage statements, and failure to pay timely wages. On appeal, the Ninth Circuit affirmed in part, reversing the trial court's award of penalties at the subsequent rate prior to entry of summary judgment on plaintiff's claims.¹⁹ On remand, the district court again awarded separate penalties for failure to pay overtime, failure to provide legally compliant meal periods, failure to provide legally compliant rest periods, failure to provide accurate wage statements, and failure to pay timely wages.

Although we did find cases in which courts awarded multiple penalties for a single course of conduct, we found none where courts awarded multiple penalties for a single violation. For example, both labor code section 558 and 1197.1 provide civil penalties for failure to pay minimum wage and overtime compensation. However, we did not find any cases in which courts awarded penalties under both sections 558 and 1197.1 for such violations.²⁰

Of course, trial courts do not always award stacked penalties when requested. In 14 of the 33 cases (42.4%) where plaintiffs prevailed and requested stacked penalties, trial courts declined to award them. For example, in *Carrington v. Starbucks Corp.*,²¹ the plaintiff alleged that the defendant failed to provide employees with compliant meal periods and requested stacked penalties under sections 226 (wage statements), 226.7 (meal periods), 512 (meal periods), and potentially 203 (timely payment on separation). The court held that the maximum penalty was \$50 for each violation under section 558, reduced the penalty to \$5 per violation, and declined to award penalties under any other section. The court of appeal affirmed, noting: "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty, as evident from the significant reduction of the \$50 maximum penalty (per initial violation) to the penalty imposed—only \$5 per initial violation."²²

DO TRIAL COURTS AWARD PENALTIES AT SUBSEQUENT RATES?

PAGA's default civil penalties include an initial violation penalty of \$100 and a subsequent violation penalty of \$200. Some labor code provisions, including section 558, include initial and subsequent penalty rates. Plaintiffs requested penalties at subsequent rates in 23 cases. Courts awarded penalties at subsequent rates in seven of those (30.4%).

However, the decision in *Gunther v. Alaska Airlines*²³ provided some needed guidance in this area, noting that the increased civil penalty for "subsequent violations" does not apply unless and until the employer is notified it is violating a labor code provision.

That does not mean it is impossible to be awarded subsequent penalties, only that an additional showing will be needed. We did not find an award of subsequent penalties that post-dates the appellate decision in *Gunther*.

HOW MUCH ARE ATTORNEY FEES AWARDS?

The mean fee award in PAGA judgments is \$1,417,418.26, or 20.45% of the total award. The median fee award for the cases we reviewed was \$391,008 or 78.2% of the total award.

There is nothing magic to discern from the fee awards. When you try a case to judgment, courts will typically award at least six figures based on a lodestar. There was only one outlier of a case in which the court awarded five figures post-trial.

WHAT HAPPENS ON APPEAL?

A total of 28 of the judgments resulted in decisions (published and unpublished) on appeal. Twelve judgments (43%) were affirmed in full, 11 (39%) were affirmed in part, and five (18%) were reversed. The reversal rate matches that in general civil matters (18%), but the affirmance rate differs significantly: 73% of general civil matters are affirmed in full, and only 9% are affirmed in part.²⁴ In contrast, 37% of PAGA appeals were affirmed in part.

This is likely because PAGA is such a new statute that many courts have found some issues to affirm and others to reverse.

Note: This article will be discussed at the California Lawyers Association Labor and Employment Law Section's upcoming *Advanced Wage and Hour Conference in Costa Mesa, CA, on July 18 at 10:30 a.m.* For more information on the conference, go to: calawyers.org/section/labor-and-employment-law.

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ENDNOTES

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The authors thank Brian Kriegler of Econ One Research for his help in analyzing the data. Kriegler is a managing director at Econ One Research in Los Angeles. He has testified as an expert statistician in both state and federal courts in more than 80 cases—including 10 wage and hour class action trials.

1. CAL. LAB. CODE §§ 2698-2699.5.
2. State of California, Dept. of Indus. Rel., <https://cadir.my.salesforce-sites.com/PagaSearch>.
3. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).
4. 9 U.S.C. §§ 1-16.
5. CAL. LAB. CODE § 226.
6. *Bernstein v. Virgin America*, 3 F.4th 1127 (2021).
7. The median is the middle number in a sorted data set. For example, if three paintings sell for \$100, \$200, and \$2,700, the median, the middle number in the data set, is \$200. On the other hand, the mean, which we think of as the “average” sale price, is \$1,000 ($\$100 + \$200 + \$2,700 = 3,000 \div 3 = \$1,000$).
8. *In Re Taco Bell Wage and Hour Actions*, No. 1:07-cv-01314-SAB, (E.D. Cal. April 8, 2016), meal and rest periods: \$122 million request; *Magadia v. Wal-Mart Associates, Inc.*, 384 F.Supp.3d 1058 (2019), meal premiums, §§ 226 and 203: \$161 million request.
9. *Magadia*, 384 F. Supp. 3d 1058 (2019), \$54 million PAGA penalty award, reversed on appeal; *Bernstein v. Virgin America*, \$25 million PAGA penalty award, reversed in part as to award of penalties at subsequent rate judgment for \$12.2 million in PAGA penalties on remand; and *Gunther v. Alaska Air Group, Inc.*, 72 Cal. App. 5th 334 (2021), \$25 million PAGA penalty award, reversed on appeal.
10. It is likely that after the decision in *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104 (2023), many cases will be bifurcated, with the named plaintiff’s individual PAGA penalties determined by an arbitrator and representative PAGA penalties determined via bench trial.
11. Although PAGA penalties are generally calculated on a per-pay period basis, courts do not necessarily award PAGA penalties that way. See *Kennedy v. Arm Strong Towing Serv., Inc.*, 2018 Cal. Super. LEXIS 20949: \$1,000 per employee in 19-employee “kitchen sink” case; *Morales v. Bridgestone Retail Operations*, 2018 Cal. Super. LEXIS 21017: \$250 per employee in section 226 case). In these cases, the authors applied the courts’ awards to the number of pay periods in the plaintiffs’ requests, where known.
12. *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112 (2012).
13. *Parr v. Golden State Overnight Delivery Serv., Inv.*, 2014 Cal. Super. LEXIS 1551.
14. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018).
15. *Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023).
16. See *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008); *Thurman v. Bayshore Transit*, 203 Cal. App. 4th 1112 (2012); and *Bernstein v. Virgin America*, 365 F. Supp.3d 980 (N.D. Cal. 2019).
17. *Monaghan v. Telecom Italia Sparkle of N.A., Inc.*, No. 2:2013cv00646 (C.D. Cal. 2018). See also, *Thurman v. Bayshore Transit Mgmt., Inc.*, *supra* note 12, judgment reversed in part and remanded “with directions to determine the amount of civil penalties for missed meal periods” and “to amend the judgment by awarding those amounts in addition to the civil penalties . . . for missed rest periods.”

18. *Amaral v. Cintas Corp. No. 2*, No. HG03-103046 (Alameda Cty. Super., 2006) aff'd on appeal, 163 Cal. App. 4th 1157 (2008).
19. *Bernstein v. Virgin America, Inc.*, *supra*, note 6.
20. See *Elder v. Schwan Food Co.*, (Los Angeles Cty. Sup.Ct., No. BC390535, 2011), request for penalties under section 558 and 1194 for failure to pay overtime, single penalty of \$2,500 awarded) *aff'd on appeal*, B238876 (Cal. App. Unpub. 2013).
21. *Carrington v. Starbucks Corp.*, No. 37-2014-00018637-CU-OE-CTL (San Diego Sup. Ct. 2017).
22. See also *Elder v. Schwan Food Co.*, *supra* note 20, in action seeking stacked civil penalties under sections 558 and 1194 for failure to pay overtime compensation, trial court “must determine in the first instance whether it would be unjust, as the company argues, for Elder to recover the [multiple penalties] for the same overtime violation;” In the second appeal after retrial, the court of appeal held that unstacked award of \$2,500 in penalties was not an abuse of discretion.
23. *Gunther v. Alaska Airlines*, 72 Cal. App. 5th 334, 356 (2021).
24. 2022 Court Statistics Report, Judicial Council of Cal., <https://www.courts.ca.gov/documents/2022-Court-Statistics-Report.pdf>.

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When she is not advocating on behalf of California's employees, Jen will be found in her garden, prized for its collection of California native plants.

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Steve Pearl is a nationally renowned employment and consumer class action mediator. He has an extensive history of successfully resolving a diverse range of cases. He specializes in the following:

Wage and hour class, Private Attorneys General Act (PAGA), and Fair Labor Standards Act (FLSA) collective actions.

Class actions under the Unfair Competition Law, Fair Credit Reporting Act, Telephone Consumer Protection Act, False Advertising Law, Consumer Legal Remedies Act, and others.

Actions alleging discrimination and harassment based on all types of protected characteristics.

Actions alleging retaliation and wrongful termination for all types of protected activity.

Actions alleging theft of trade secrets and violation of non-competition agreements.

Recognition

A “nationally renowned wage and hour class/collective action mediator...”

George v. Academy Mortgage Corp., 369 F. Supp. 3d 1356 (N.D. Ga. 2019).

“[S]pecializes in mediating employment disputes, including wage and hour class actions.”

Espinosa v. California College of San Diego, Inc. (S.D. Cal. 2018).

A “well-respected and experienced mediator of class action lawsuits in California.”

Gradie v. CR England, Inc. (D. Utah 2020).

A “well-respected mediator in wage and hour matters.”

McClure v. Brand Energy Service, LLC (E.D. Cal. 2021),
citing *Contreras v. Worldwide Flight Servs., Inc.* (C.D. Cal. 2019).

An “experienced class action mediator...”

Hernandez v. Children's Creative Learning Centers (N.D. Cal. 2013).

Distinguished Fellow, International Academy of Mediators

An invitation-only professional membership organization consisting of the most successful and highly trained professional mediators in the world.

“Super Lawyer” in *Dispute Resolution and Employment & Labor Law*

2011 to 2024 Southern California Super Lawyers Magazine

“Rising Star” Neutral (One of Ten in California)

2013 Daily Journal List of Top California Neutrals



Education

University of California College of the Law, San Francisco (Juris Doctor, 1992)
(formerly University of California Hastings College of Law)
Dean's Scholar

University of California, Berkeley (Bachelor of Arts, 1989)
Graduated with Honors from the Department of English

Experience

Full Time Neutral (2011 - present)

The Pearl Law Firm, A Professional Corporation (1994 - 2011)
Founded practice with emphasis in litigating individual and class action wage and hour, employment, unfair competition, and consumer protection actions.

Orrick, Herrington & Sutcliffe (1992 - 1994)
Litigated complex employment, business, insurance coverage, and entertainment actions.

Judicial Extern for Hon. Fern M. Smith (1991 - 1992)
United States District Court, Northern District of California

Professional Associations

State Bar of California (now California Lawyers Association)
Executive Committee, Labor and Employment Law Section (2011 - 2015)

Los Angeles County Bar Association
Executive Committee, Labor and Employment Law Section (2010 - Present)

Treatises

California Wage and Hour Law and Litigation
Continuing Education of the Bar
Contributing Author

Employee Rights Litigation: Pleading and Practice
Matthew Bender and National Employment Lawyers Association
Contributing Author

Lead Organizer, Full-Day Conferences

"Advanced Mediation Conference: Practical Skills to Improve Results in Mediation"
California Lawyers Association (formerly State Bar of California)
2016, 2019, 2022, 2023



“Advanced Wage and Hour Conference”

*California Lawyers Association (formerly State Bar of California)
2013 - 2014*

“Advanced Wage and Hour Conference”

*California Employment Lawyers Association
2008 - 2011*

State Bar of California Approved MCLE Provider

“Ethics in Mediation”

*Approved for One Hour of Legal Ethics Credit
2022 - 2024*

Blogs & Newsletters

“California Employment Law Blog”

From 2009 to 2017, Mr. Pearl wrote more than 800 blog posts on current developments in state and federal employment, wage and hour, class action, unfair competition, and arbitration law.

“Mediation and Negotiation Blog”

Insights into mediation and negotiation theory and best practices.

“The Employment Law Update”

Monthly email update on employment law developments with more than 2,000 subscribers, including plaintiffs’ attorneys, defense attorneys, and neutrals.

Other Publications

“PAGA at 20: What Happens When PAGA Cases Go to Trial?”

*California Labor & Employment Law Review
Official Publication of the California Lawyers Association
Labor and Employment Law Section
March, 2024*

“Class Action Attorney’s Fee Awards: A Nation-Wide Survey of the Federal Circuit Courts of Appeals”

Consumer Attorneys of California Forum Magazine, January, 2024

“Anti-SLAPP and Employment in 2015”

Daily Journal, January 27, 2016

“Wage and Hour Update”

*California Labor & Employment Law Review
Official Publication of the State Bar of California Labor and Employment Law Section
2011 - 2015*



“Don’t Get Carried Away with Your Demands”

Daily Journal, December 11, 2015

“Pre-Mediation Demands May Anchor Talks”

Daily Journal, September 25, 2015

“Does the Federal Arbitration Act Cover Your Dispute?”

Daily Journal, August 28, 2015

“Improving Results in Mediation: Practical Lessons from the Science of Decision Making”

California Labor & Employment Law Review, November 2014

“When Negotiation Becomes Extortion”

Daily Journal, June 26, 2014

“Employment Law Class Actions after Concepcion”

Los Angeles Lawyer, April, 2014

“What Are They Thinking?!? Understanding Decision-Making in Mediation”

Advocate Magazine, September, 2012

“The Limits on Employer Deductions from Pay in California”

Los Angeles Lawyer Magazine, November, 2010

“California Supreme Court Finally Defines ‘Employer’ Under California Wage Law”

Continuing Education of the Bar, California Business Law Reporter, July, 2010

“‘Employer’ Defined Under California Wage Law”

Daily Journal, June 1, 2010

“Bargaining in the Dark”

Daily Journal, April 30, 2010

“Real World Lessons from ‘Powerless’ Mediators”

Daily Journal, April 8, 2010

“Undocumented Workers Have Equal Rights Under Wage and Hour Laws”

California Employment Lawyers Association Bulletin, May, 2008

“Powerful Weapon: The Role of the Expert in Civil Litigation Has Changed”

Daily Journal, September 12, 2001

Speaking Engagements

“PAGA at 20: What Happens When PAGA Cases Go to Trial?”

Los Angeles County Bar Association

Labor and Employment Law Symposium, March, 2024

“Ethics in Mediation”

Steve Pearl Mediation P.C. and Barr Mediation LLC, January, 2024



“Early Resolution of Mass Arbitrations”

MassArbCon Tech Legal Conference, September 6, 2023

“The ABCs of Resolution”

California Lawyers Association (formerly State Bar of California), January 20, 2023

“Ethically Mediating Your Case”

Orange County Bar Association, January 15, 2023

“Ethics in Mediation”

Steve Pearl Mediation P.C. and Barr Mediation LLC, January 12, 2023

“Mediation: Mixed Motives and Mixed Signals”

“Competition and Cooperation”

“Doing the Dance and Cutting to the Chase”

California Lawyers Association (formerly State Bar of California)

Advanced Mediation Conference, December 1 and 2, 2022

“PAGA: What’s Next After Viking River Cruises?”

Los Angeles County Bar Association, May 22, 2022

“Fundamentals for New Practitioners: Employment Law 101”

California Lawyers Association (formerly State Bar of California), January 20, 2022

“Ethically Mediating Your Case”

Orange County Bar Association, January 15, 2022

“Mediators Roundtable”

California Employment Lawyers Association, October 27, 2021

“Fundamentals for New Practitioners: Employment Law 101”

California Lawyers Association (formerly State Bar of California), January 20, 2021

“Beyond Dynamex and AB5: Independent Contractors in the 2020s”

Los Angeles County Bar Association, April 25, 2020

“FLSA Regulations and Opinion Letters: The Latest from the DOL”

American Bar Association, April 23, 2020

“Mediation: Mixed Motives and Mixed Signals”

“Competition and Cooperation”

“Preparing for Mediation”

“Lessons Learned”

California Lawyers Association (formerly State Bar of California)

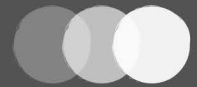
Advanced Mediation Conference, November 14, 2019

“Valuing Employment Law Actions for Settlement”

Alameda County Bar Association, October 26, 2018



- “Hot Topics in PAGA Litigation and Arbitration”
California Lawyers Association (formerly State Bar of California), July 12, 2018
- “Mediation and Settlement: Tips on Damages Analysis, New Case Law, and Cy Pres”
Bridgeport Continuing Education, December 8, 2017
- “Mediating Employment Discrimination Cases in Changing Times”
Southern California Mediation Association, May 18, 2017
- “Mediation: Mixed Motives and Mixed Signals”
“Competition and Cooperation”
“Preparing for Mediation”
“Lessons Learned”
*State Bar of California
Advanced Mediation Conference, December 2, 2016*
- “The Watch List: Pending United States and California Supreme Court Employment Law Cases”
State Bar of California, September 29, 2016
- “Advanced Strategies for Mediating the Employment Law Case”
State Bar of California, October 8, 2015
- “What Are They Thinking?! Understanding the Science of Decision-Making Can Help You Achieve Better Results in Mediation”
Consumer Attorneys of San Diego, May 3, 2014
- “Advanced Strategies for Mediating the Employment Law Case”
State Bar of California, October 11, 2013
- “Recent Developments in Wage and Hour Law”
Pasadena Bar Association, September 10, 2013
- “Resolving Discrimination and Harassment Claims”
State Bar of California, June 14, 2013
- “Getting To and Through a Class Action Trial”
California Employment Lawyers Association, April 5, 2013
- “Wage & Hour Compliance for Business Law Practitioners”
Continuing Education of the Bar, March 8, 2013
- “*Harris v. City of Santa Monica*: Causation in Fair Employment and Housing Actions”
State Bar of California, February 22, 2013
- “Advanced Strategies for Mediating the Employment Law Case”
State Bar of California, February 20 and 27, 2013
- “The Fair Labor Standards Act and California Labor Code”
Lorman Education Services, January 15, 2013



“Update on Arbitration Law and The Nuts and Bolts of Arbitrations”
Bridgeport Continuing Education, December 14, 2012

“Wage & Hour – Now What? Emerging Trends and New Developments”
Employment Roundtable of Southern California, November 7, 2012

“Wage and Hour 201: The Future of Wage and Hour Class Actions”
California Employment Lawyers Association, October 5, 2012

“Advanced Mediation Techniques in Wage and Hour Cases”
State Bar of California, July 25, 2012

“Wage and Hour after Brinker – What’s Next?”
Pasadena Bar Association, July 9, 2012

“Mediating Employment Law Cases”
State Bar of California, June 21, 2012

“Settlement Talks & Mediation in Discrimination and Harassment Cases”
Bridgeport Continuing Education, May 11, 2012

Beyond Brinker: Give Me A Break!!”
Beverly Hills Bar Association, May 1, 2012

“Ethical Considerations in Mediation”
Ventura County Bar Association, March 9, 2012

“Hot Button Issues in Wage and Hour Law”
Los Angeles County Bar Association, March 7, 2012

“Achieving Your Goals Through Successful Mediation”
Association of Corporate Counsel, Southern California Chapter, Feb. 15, 2012

“Advanced Mediation Techniques for the Employment Lawyer: The Lost Art of Preparation”
Los Angeles County Bar Association, January 13, 2012

“Strategies for Settlement of Individual and Wage & Hour Class Action Cases”
Bridgeport Continuing Education, December 16, 2011

“Employment Law Update: Wage and Hour Misclassification”
Consumer Attorneys Association of Los Angeles, September 9, 2011

“Developing and Sustaining an Employment Law Firm: Plaintiff, Defense and Mixed Plaintiff-Defense Practices”
Los Angeles County Bar Association, June 9, 2011

“Master Mediators: After the Mediation, It’s Never Over Even When It’s Over”
Southern California Mediation Association, May 21, 2011



“30 Cases in 30 Minutes: A Round-Up of the Last Year's Most Important Developments”
California Employment Lawyers Association, April 29, 2011

“Wage and Hour Compliance for Business Law Practitioners”
Continuing Education of the Bar, April 15, 2011

“Beyond Overtime: Spotting Wage and Hour Issues for Employers and Employees”
Encino Lawyers Association, March 9, 2011

“Damage Modeling in Wage and Hour Class Actions”
Bridgeport Continuing Education, December 16, 2010

“Lessons Learned: Successful Lawyers Talk about Painful Moments”
California Employment Lawyers Association, October 1, 2010

“Technology in the Courtroom: Using Excel to Calculate Wage and Hour Damages”
California Employment Lawyers Association, September 30, 2010

“Class Certification Standards and Daubert Analysis in Flux”
Strafford Publications, July 8, 2010

“Current Developments in California and Federal Wage and Hour Law”
California Employment Lawyers Association, April 30, 2010

“California Employment Law Face Off: Plaintiff and Defense Attorneys Go Head-to-Head on California Employment Law Issues”
Employment Law & HR Forum, November 6, 2009

“Mediating Independent Contractor Cases”
Southern California Mediation Association, May 9, 2009

“Starting Off on the Right Foot: Case Intake, Investigation, and Provisional Remedies”
California Employment Lawyers Association, May 1, 2009

“[Mis]Classified Information: Independent Contractor vs. Employee Status”
Los Angeles County Bar Association, March 31, 2009

“Handling Small Cases in Difficult Industries: Practical Solutions for Practitioners”
California Employment Lawyers Association, October 3, 2008

“Meal and Rest Period Compensation is a Wage - So What? Mediating Meal and Rest Period Cases after *Murphy v. Kenneth Cole*”
Southern California Mediation Association, May 10, 2008

“Recent Developments and Hot Topics in California Wage and Hour Law”
California Employment Lawyers Association, May 9, 2008



“Recent Developments and Hot Topics in California Wage and Hour Law”
California Employment Lawyers Association, May 11, 2007

“To Pay or Not to Pay: Cutting Edge Issues in Employers' Duties to Indemnify Employees and Employees' Duties to Repay Their Employers”
Los Angeles County Bar Association, March 8, 2007

Pro Bono and Charitable Activities

Mr. Pearl has given his time to numerous pro bono and charitable organizations, including AYSO, The Los Angeles Jewish Home for the Aging, and TreePeople.

Personal

Mr. Pearl loves skiing, mountain biking, hiking, and travel, and he currently is training for his first triathlon. He lives in Los Angeles with his wife.

Contact Information

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Nikki@stevePearlMediation.com