

# The 12 Days of California Labor & Employment Series – Day 10: Civil Penalties for Unpaid Wages

2 min read

Dec 19, 2019

By: Mellissa A. Schafer

It's the end of the year and while everyone is busy, employers in California should be aware of new laws and regulations that go into effect on January 1, 2020. In the spirit of the season, we are using the "12 days of the holidays" to blog about one California law daily and its impact on California employers. On the tenth day of the holidays, my labor and employment attorney gave to me: ten pipers piping and AB 673.

California law currently provides for a civil penalty to be imposed on employers who fail to pay the wages of an employee as provided in specified provisions of the Labor Code. Current law requires the Labor Commissioner to recover that penalty as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. In the independent civil action, a specified percentage of the penalty recovered is to be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder be paid into the State Treasury to the credit of the General Fund.

AB 673 amends California Labor Code Section 210 as of January 1, 2020, and authorizes an employee to bring a private right of action to recover specified statutory penalties against the employer as part of a hearing held to recover unpaid wages. The law also provides that an employee can select which action to file whether it be under Labor Code Section 210 or to enforce civil penalties under a specified provision of the Labor Code Private Attorneys General Act (PAGA). They can file an action for one, but not both, for the same violation.

If an action is brought under California Labor Code Section 210, the employer is subject to \$100 for each failure to pay each employee for any initial violation. For each subsequent violation, or any willful or intentional violation, the employer is subject to \$200 for each failure to pay each employee plus 25% of the amount unlawfully withheld. The penalty



shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation.

In summary, an employee may select to file a private action before the Labor Commissioner or to seek to enforce civil penalties under PAGA. Employers should note that these remedies are in addition to penalties an employee may recover through an action brought by the Labor Commissioner. It is believed that most employees will start filing their own private right of action as it will put more money in their pocket. Under PAGA, 75% of the penalty goes to the State of California.

Wage and hour claims in California are common. Employers need to make sure their payroll procedures are as perfect as they can be to ensure that they are paying the proper amount of wages on a timely basis to each employee. If an employer works with a payroll company/provider, the employer should make sure that payroll provider is compliant and may want to consider a periodic audit of their practices through counsel to ensure compliance and mitigate mistakes. Good record-keeping is also necessary. When wages change, it should be documented to ensure a detailed paper trail. If a mistake is found, it is a best practice to remedy the mistake as quickly as possible with any required penalty. Lastly, an employer should be prepared to maintain all wage records for four years after an employee ceases to be an employee to protect itself the best it can for future litigation.

---

*Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit [www.hinshawlaw.com](http://www.hinshawlaw.com) for more information and follow @Hinshaw on LinkedIn and X.*

## Topics

California, Unpaid Wages, Labor Code, #12Days, Civil Penalties

## Related Capabilities

Labor & Employment