



STATE OF CALIFORNIA
Labor & Workforce Development Agency

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Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Development Board • Department of Industrial Relations
Employment Development Department • Employment Training Panel • Public Employment Relations Board

November 8, 2024

Elizabeth Christopher
Bibiyan Law Group, P.C.
1460 Westwood Boulevard
Los Angeles, CA 90024

Certified Mail

USPS Tracking No. 7010 0290 0001 1514 8755

**Re: Christopher Boyd v. Aminco International (USA), Inc.
Case No. LWDA-CM-1052275-24**

Notice Re: Claimant Directed to Amend PAGA Notice

Dear Ms. Christopher:

On September 23, 2024, you filed a notice on behalf of claimant Christopher Boyd against his former employer, respondent Aminco International (USA), Inc., pursuant to the Labor Code Private Attorneys General Act of 2004 (PAGA), codified at Labor Code section¹ 2698 et seq. On October 28, respondent timely submitted a proposal to cure alleged violations, stating a desire to cure violations alleged by claimant but drawing attention to deficiencies in the underlying notice that impede the ability of both the employer to undertake such efforts and the Labor and Workforce Development Agency (LWDA) to evaluate the sufficiency of the employer's cure proposal.

LWDA's PAGA Unit has reviewed claimant's September 23 PAGA notice and has determined it does not satisfy the prelitigation notice requirements set forth in section 2699.3, subdivision (c)(1). Accordingly, claimant hereby is directed to submit to LWDA via the online PAGA filing portal an amended notice, signed by an attorney of record, setting forth the specific violations personally suffered by claimant and the facts and theories supporting the violations alleged. An amended PAGA notice must be submitted no later than Friday, November 22, 2024. Upon proper amendment, respondent shall have 33 days from receipt of

¹ Subsequent statutory citations are to the Labor Code unless otherwise indicated.

the notice to submit a proposal to cure violations pursuant to section 2699.3, subdivision (c)(2)(A).

Absent amendment satisfying the requirements of section 2699.3, subdivision (c)(1), the underlying notice is deemed insufficient for purposes of the prelitigation administrative exhaustion requirements set forth in the Act, and no civil action thereupon may be commenced.

I. Background

Claimant filed the underlying PAGA notice on September 23 against respondent, his former employer. The notice is not signed by any attorney or other representative, but rather concludes with the salutation: "Very truly yours, [¶] BIBIYAN LAW GROUP, P.C."² The 17-page notice alleges a litany of Labor Code violations, many of which appear to be in boilerplate form. According to the notice, claimant's duties while employed with respondent included "creating concepts in universities for bottle openers and lanyards." While claimant provides no other information regarding his employment with respondent, respondent asserts he was employed as a graphic designer and worked in an office setting.

The nature of the violations alleged by claimant include, but are not limited to:

- Minimum wage and overtime violations on grounds claimant was subject to "long lines for clocking in" and required to "complete pre-shift tasks before clocking in and post-shift tasks after clocking out," "to don and doff uniforms and/or safety equipment off the clock," "to go through security screenings and/or temperature checks off the clock," among other things;
- Meal period violations on grounds claimant was "required to walk to and from a suitable break area," "having to wait in line to clock back in," "having to don and doff safety gear during the meal period," "having to undergo security or bag checks during the meal period," "having to retrieve and store personal belongings during the meal period," "requiring that employees carry cellular telephones or walkie-talkies during meal periods," among other things;

² Notwithstanding this, the PAGA portal online submission form and case information page indicates the notice was submitted by Elizabeth Christopher.

- Rest period violations, including on grounds mirroring those described above regarding the alleged meal period violations;
- Allegations claimant was denied cooldown periods;
- Recordkeeping and wage statement violations, including failing to maintain records showing "the ages of all minors;"
- Unlawfully deducting wages from claimant due to issuance of gift cards, etc., when respondent lacked sufficient funds for payment, "and/or" scrip, coupon cards, "or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money," among other things;
- Indemnification and reimbursement violations, including on grounds claimant incurred mileage and gas expenses for use of his personal vehicle, as well as other expenses due to "purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment," among other things;
- Failure to provide all temporary workers "with wages owed weekly;"
- Tipping or gratuity violations, including that respondent "has or had collected, taken, or received gratuities (or a part thereof) that is paid, given to, or left for [claimant] by a patron," among other things;
- Seating violations by not providing claimant "suitable seats when the nature of the work reasonably permits the use of seats," among other things;
- Respondent forbid or prevented claimant "from engaging or participating in politics, and/or from becoming a candidate for public office;" and
- Child labor law violations on grounds respondent employed minors under the age of 16 years "in connection with a manufacturing establishment," "in adjusting belts to machinery, sewing or lacing machine belts in a workshop or factory, and/or oiling, wiping, cleaning machinery and/or assisting therewith," "in operating or assisting in operating machines, including circular or band saws, wood shapers, wood-jointers, planers, sandpaper machinery, wood-polishing machinery, wood turning or boring machinery, picker machines, machines used in picking wool, cotton, hair or other material, carding machines, leather-burnishing machines, laundry machines, printing-presses, boring or drill presses, stamping machines used in sheet-metal and tinware, in paper and leather manufacturing, in

washer and nut factories, metal or paper-cutting machines, paper-lace machines, corner-staying machines in paper-box factories, corrugating rolls, dough brakes, cracker machinery, wire or iron straightening or drawing machinery, rolling mill machinery, power punches or shears, washing, grinding or mixing machinery, calendar rolls in paper and rubber manufacturing, steam boilers, and others, even in or out of proximity to hazardous or unguarded belts, machinery or gearing," as well as the unlawful employment of minors under the age of 15, or the age of 14 or 15 who were required to work while school is in session; among other things.

This is only a sample of the types of allegations asserted by claimant in his 17-page PAGA notice.

II. Claimant's Notice Does Not Satisfy Prelitigation Exhaustion Requirements

Before an "aggrieved employee" may commence a civil action under PAGA, section 2699.3, subdivision (c)(1) requires the employee to give written notice to LWDA and the employer "of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." This prelitigation notice obligation has been described as an "administrative exhaustion" requirement (*Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1056), and courts have affirmed that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit." (*Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 1003.)

Before the recent PAGA reforms (Stats. 2024, ch. 44 [Assem. Bill No. 2288 (2023-2024 Reg. Sess.)], ch. 45 (Sen. Bill No. 92 (2023-2-24 Reg. Sess.)]), the California Supreme Court found PAGA did not require a claimant to "satisfy a particular threshold of weightiness" in describing the facts and theories supporting the violations alleged in a notice. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 546.) In doing so, the court concluded a heightened proof requirement "would undercut the clear legislative purposes the act was designed to serve." (*Ibid.*)

Recent amendments to PAGA evince a legislative intent to increase LWDA oversight of PAGA and provide more robust early resolution avenues for employers, both with an aim towards achieving more timely remedies to make employees whole without the type of protracted and costly litigation that has led to criticism of the Act. (Sen. Com. on Jud., analysis of Assem. Bill No. 2288 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 1 [noting bill "increases the role of [LWDA] and better incorporates the available remedies, processes, and outcomes utilized or sought by [LWDA] in its enforcement efforts"]; Assem. Com. on Jud., Analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 12 ["At its core this bill addresses the business community's objections that PAGA ... denies businesses the right to cure violations and results in

protracted and costly litigation"].) Two key components of the reforms are (1) the small employer prelitigation cure process administered by LWDA and (2) the early evaluation conference procedure available after a civil action has commenced, both of which are designed to facilitate more timely resolution of PAGA claims. (Assem. Com. on Jud., Analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 13 ["The underlying rationale for both this measure and AB 2288 appears to be a goal of resolving PAGA disputes in a timelier manner. The cure and early evaluation conference provisions of this bill are designed to promote resolution of PAGA claims without protracted litigation"].)

These early resolution opportunities are complimented by amendments to section 2699.5 expanding the types of claims subject to cure and early resolution procedures, including the most common types of wage and hour violations alleged in PAGA notices. Another aspect of the reforms relevant here is the limitation on employee standing; under section 2699, subdivision (c)(1) a claimant must have been employed by the employer "and personally suffered each of the violations alleged" within one year of the date the PAGA notice is filed.

With these considerations in mind, a PAGA notice properly must inform both LWDA and the employer of the nature of the violations alleged with some level of detail in describing the "facts and theories" supporting them. In this matter, many of the violations alleged in the underlying notice, including those summarized above, appear to have no applicability to this particular claimant and the specific nature of his working conditions with his former employer. (See § 2699, subd. (c)(1).) While the pleading standard attendant to PAGA notices is not necessarily a "weighty" or burdensome one, it is determined this notice does not satisfy even the standard of "nonfrivolousness" applicable to PAGA notices preceding the recent reforms. (*Williams, supra*, 3 Cal.5th at p. 545, citing Code Civ. Proc., § 128.7.)

Courts previously have found a PAGA notice "must be specific enough such that the LWDA and the [employer] can glean the underlying factual basis for the alleged violations." (*Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874, 882, quoting *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 351.) Thus, "more than bare allegations" are required. (*Ibarra, supra*, 102 Cal.App.5th at p. 881.) The notice must contain sufficient information to allow LWDA "to intelligently assess" the alleged violations and to give the employer enough information to understand the nature of the violations so it may decide "whether to fold or fight." (*Ibid.*, quoting *Brown v. Ralph's Grocery Co.* (2018) 28 Cal.App.5th 824, 837.) Proper notice to the employer informing it of the violations alleged enables the employer to submit a response to LWDA, which, in

turn, further promotes informed agency decisionmaking. (*Uribe, supra*, 70 Cal.App.5th at pp. 1003-1004.)

These considerations underlying PAGA's prelitigation notice requirements take on even more importance after the recent reforms. The effectiveness of the newly enacted administrative cure procedure set forth in section 2699.3, subdivision (c)(2) depends on proper notice of the violations alleged so LWDA accurately can assess the nature of the claims at issue and an employer has a reasonable opportunity to identify and endeavor to correct them. New standing requirements under section 2699, subdivision (c)(1) further limit the scope of the violations a PAGA claimant may allege.

In light of the foregoing, claimant's blanket PAGA notice, reciting a compendium of Labor Code violations in boilerplate form without any indication of applicability or relevance to claimant, is tantamount to no notice at all. A claimant or claimant's representative must participate in PAGA's prelitigation administrative procedures in good faith. Abusive, evasive, or other tactics designed to frustrate the role of LWDA during these procedures, or the ability of employers to identify the nature of the claims actually at issue, cannot be tolerated. Otherwise, the recent legislative reforms designed to improve PAGA and achieve prompt remedies for employees would be rendered meaningless.

III. Conclusion and Order

For the reasons set forth above, LWDA's PAGA Unit has determined the September 23, 2024 PAGA notice filed on behalf of claimant Christopher Boyd fails to satisfy the prelitigation administrative exhaustion requirements of Labor Code section 2699.3, subdivision (c). Claimant shall file with LWDA an amended notice setting forth those specific violations personally suffered by claimant and the facts and theories supporting the violations alleged no later than Friday, November 22, 2024, via the online PAGA filing portal with service to the employer by certified mail as required by section 2699.3, subdivision (c)(1). Any amended notice shall be signed by an attorney of record pursuant to Code of Civil Procedure section 128.7.

Following such filing and service, respondent Aminco International (USA), Inc. shall have 33 days from receipt of the amended notice to submit a confidential proposal to cure any violations therein alleged in accordance with section 2699.3, subdivision (c)(2)(A).

Absent timely amendment, claimant's September 23 PAGA notice is deemed insufficient to satisfy the notice requirements of section 2699.3, subdivision (c) and, therefore, no civil action may be commenced thereon.

Sincerely,



Todd M. Ratshin
Deputy Secretary for Enforcement

CC:

Jason Goldwater
Gordon Rees Scully Mansukhani
101 W. Broadway, Suite 2000
San Diego, CA 92101

Certified Mail

USPS Tracking No. 7010 0290 0001 1514 8762