

Date of Hearing: August 19, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 646 (Hertzberg) – As Amended July 14, 2021

Policy Committee:	Labor and Employment	Vote:	7 - 0
	Judiciary		9 - 1

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill exempts a janitorial employee, who works for a janitorial contractor under specified collective bargaining agreements, from the right to bring an action through the Private Attorneys General Act (PAGA), unless a court or administrative agency finds the labor union breached its duty of fair representation in relation to a PAGA claim. The janitorial contractor must report specified information to the Labor and Workforce Development Agency (LWDA) within 60 days of entering the collective bargaining agreement. This bill sunsets the exemption on the expiration date of the collective bargaining agreement or July 1, 2024, whichever is earlier.

FISCAL EFFECT:

Costs of approximately \$161,000 in the first year and \$149,000 annually until the exemption's sunset date to the Division of Labor Standards Enforcement (DLSE), the entity likely designated by the LWDA to compile information shared by janitorial contractors and answer questions from employees, attorneys and other members of the public.

Additionally, since 75% of penalties imposed under PAGA go to the LWDA for enforcement and educational purposes, the LWDA may experience a reduction in penalty revenue (Special Fund).

COMMENTS:

- 1) **Purpose.** According to the author, PAGA is a powerful tool for underrepresented workers but PAGA also puts “enormous pressure on employers to settle claims regardless of the validity of those claims.” The authors notes this dynamic is why the Legislature previously granted a PAGA exemption to construction workers covered by a collective bargaining agreement, since the mutual agreement provides a relative balance of power between employees and employers. The author intends this bill to “provide that same modest exemption to janitorial contractors with employees performing duties under a collective bargaining agreement.” This bill is sponsored by a janitorial contracting company and supported by similar companies and SEIU California.
- 2) **PAGA.** PAGA allows an employee to bring a lawsuit to recover civil penalties on behalf of themselves, fellow employees and the State of California as a means of private enforcement of Labor Code violations. Enacted in 2003, PAGA reflects the reality that the state's labor enforcement agencies lack the resources to investigate and take action against every violation. However, contrary to the claims of PAGA's critics, employees and their lawyers

do not routinely use PAGA to bring frivolous claims to enrich themselves, as the employee who brings the suit does not collect any damages. Under PAGA, the employee receives 25% of any civil penalty imposed, with the other 75% going to the LWDA for enforcement and educational purposes.

- 3) **Narrow, Time-Limited Exemption.** AB 1654 (Rubio), Chapter 529, Statutes of 2018, provided a limited PAGA exemption for any employee in the construction industry working under a valid collective bargaining agreement that includes, amongst other conditions, grievance and arbitration procedures to address workplace violations. This bill follows AB 1654 and allows a limited PAGA exemption for janitorial employees working under specified collective bargaining agreements. In addition to similar due process provisions as AB 1654, this bill allows the exemption if the janitorial contractor is registered as a property service employer in calendar year 2020 and the employee is represented by a labor organization that has represented janitors before January 1, 2021. This bill sunsets the exemption on the expiration date of the collective bargaining agreement or July 1, 2024, whichever is earlier.

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