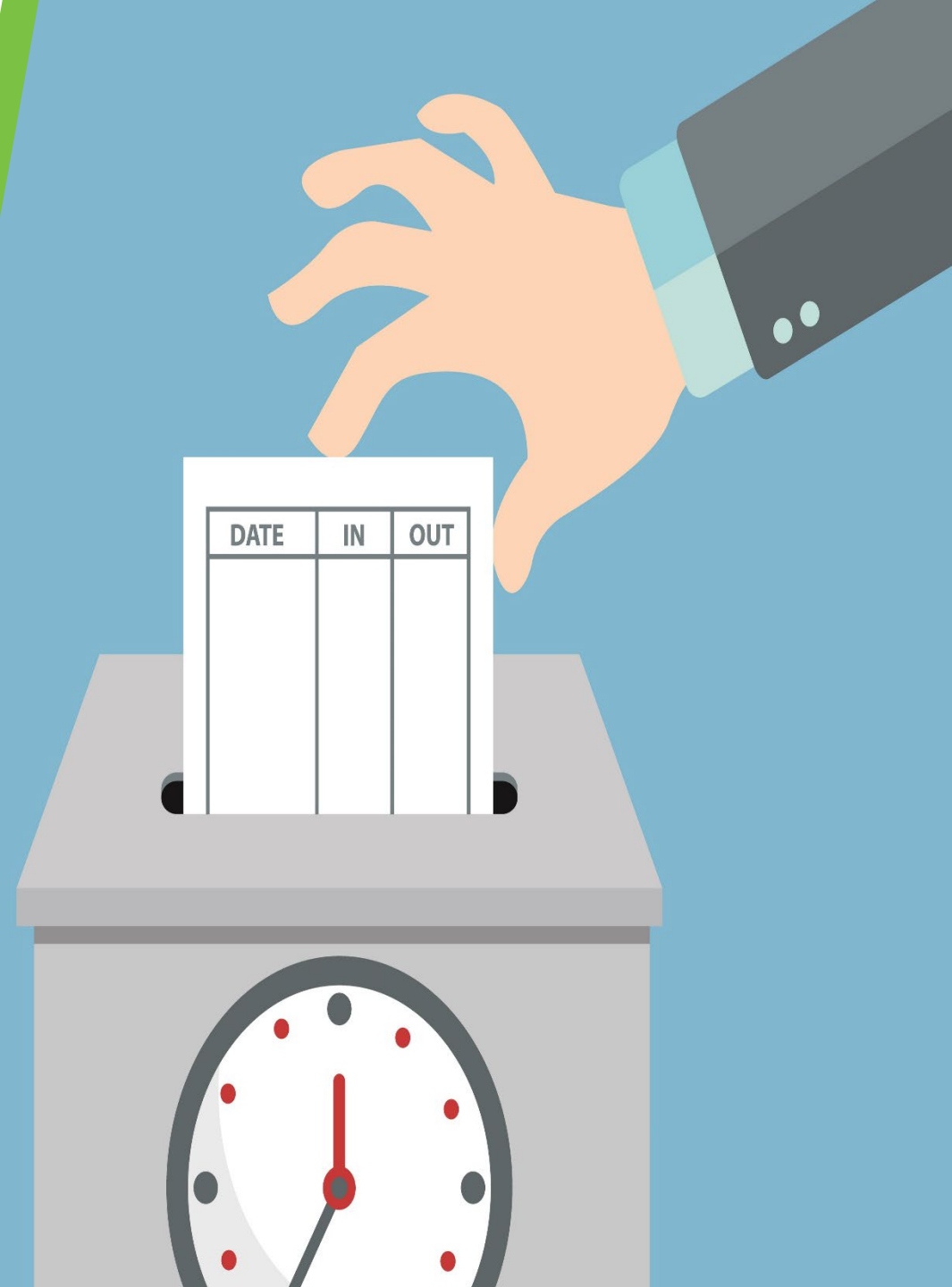


PAGA for Behavioral Health Agencies

Presented to the CBHA Whole System Care Conference

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PRESENTED BY:
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Meet April...

April Szabo focuses her practice on employment matters, with an emphasis on practical, cost-effective client counseling and litigation.

She specializes in providing clients with Human Resources guidance, including wage/hour counseling, drafting and revising employer documents.

Her background also includes many years of litigation, with an emphasis on class and PAGA.



CLASS ACTION VS. PAGA

California Wage & Hour Cases

- ▶ A Labor Code wage and hour claim starts as a personal claim for unpaid wages (damages) and/or penalties.
- ▶ But even good individual wage and hour claims are relatively low value, so they are usually not litigated individually.
- ▶ Instead, employees (read: their lawyers) choose to file (1) a **Class Action**, (2) a **PAGA Action** or (3) Usually **Both**

Class Action vs. PAGA Summary

Class Action	PAGA Action
Employee sues for DAMAGES = money owed to themselves + their fellow employees & keeps <u>all</u> of it	Employee sues for PENALTIES = money owed to the State & keeps <u>part</u> of it
4-year “look back”	1-year “look back”
Employees (and attorneys) keep 100 percent of the settlement	Employee sends 75% 65% of the settlement money to the State
Court approval of the class action <u>and</u> settlement required.	Court approval of the settlement required.
Employee does not need to submit anything before filing Complaint	Employee needs to send notice letter to the State before filing Complaint
Covered by arbitration agreement	Not covered by arbitration agreement



PREPARING



PAGA Amendments

- ▶ There was a 2024 ballot initiative to repeal PAGA.
- ▶ Legislature intervened and negotiated with unions and others to come up with PAGA Amendments.
- ▶ Amendments apply to claims filed **on or after June 19, 2024.**
 - ▶ **They do not apply to PAGA claims made before that date.**
 - ▶ If you had a PAGA case going before June 19, the revisions do not apply to you.

PAGA Amendments – An Incomplete List

▶ Caps & Reductions for PAGA Penalties



- Reduced penalties if you can show you took **all reasonable steps to get into compliance BEFORE you received:**
 - PAGA notice
 - Request for personnel records or payroll records
- Reduced penalties if you can you show you took **all reasonable steps to get into compliance WITHIN 60 DAYS AFTER after you received:**
 - PAGA notice
 - Request for personnel records or payroll records
- This is **remediation**—you are not going back and fixing the past

▶ Caps for Isolated Errors & Technical Violations

▶ Eliminated the **double** penalty if you pay your employees weekly

▶ No Derivative Penalties



Actions Starting Today

- 
- ▶ Check to see if your Employment Practices Liability Insurance (EPLI) insurance covers wage & hour claims (most do not; some cover cost of defense)
 - ▶ **Think seriously about using arbitration agreements**
 - ▶ **Conduct a wage & hour audit** (audit current practices against Labor Code requirements)
 - Engage an **experienced** attorney or HR consulting firm – you need to **be sure this is done right**
 - ▶ Start the process of fixing problems
 - Isolate departments of major concern
 - Implement practices to fill gaps if there is immediate exposure
 - ▶ Document everything (“Project: Total Compliance”)
 - Keep everything (including emails) in one place so you can pull it quickly

Actions Starting Today

- ▶ Check your organization for the most common PAGA claims
 - **Off the Clock Work**
 - Minutes an employee is under your control before/after they are on the clock
 - Boot up/shut down PC?
 - Security check?
 - **Rounding time entries** ✘
 - Are your employees doing this on their own? [8:00 – 5:00]
 - **Regular Rate**
 - Bonuses + commissions may change the rate of pay for overtime, meal/rest premiums and paid sick leave

Actions Starting Today

- ▶ Check your organization for the most common PAGA claims
 - **Meal & Rest Periods**
 - Do your records show missed, late or short punches?
 - Do you have signed meal waivers for everyone?
 - What to do about rest periods?
 - **Reimbursement**
 - Using personal cell phones for any work purpose
 - Texts about scheduling or anything work-related
 - Remote work

Actions When You Get a PAGA Notice

- ▶ Contact counsel ASAP
- ▶ Ask them to explain the alleged violations, if possible
 - Many PAGA letters do not identify specific Labor Code violations or practices
- ▶ Determine which violations (if any) you can completely correct within 60 days
- ▶ Determine the cost to correct those violations
- ▶ Evaluate (with your counsel) whether the cost of remediation makes sense

Questions & Answer Session



Thank You

For questions or comments, please contact:

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