

Hi. This is Chris Micheli from the Sacramento Governmental Relations Firm of Aprea & Micheli and an adjunct professor here at McGeorge School of Law.

Thanks for joining today's brief podcast on AB 1654 from the 2018 legislative session. AB 1654 by State Assemblywoman Blanca Rubio was signed by Governor Jerry Brown on September 19th. It is Chapter 529, and it creates a new exemption from the Labor Code Private Attorneys General Act of 2004, otherwise known as PAGA.

It's strictly for the construction industry, and it accomplishes this by adding and repealing Labor Code Section 2699.6. AB 1654 exempts from PAGA an employee in the construction industry which is defined with respect to work performed under a valid collective bargaining agreement in effect any time before January 1, 2025.

That collective bargaining agreement, CBA, must contain certain provisions, including among other things a grievance and binding arbitration procedure to address violations that authorize the arbitrator to award otherwise available remedies.

AB 1654 authorizes this exception until the CBA expires or until 1/1/2028 whichever is earlier. It repeals the bill's provisions on January 1, 2028. According to the bill's author, Assemblywoman Rubio, PAGA is a complex legal process that has led to the unintended consequence of significant legal abuse.

PAGA, in effect, encourages class-action type lawsuits over minor employment issues because once a PAGA lawsuit has been filed, the employee or class plaintiff is suing on behalf of the state and the issues involved are no longer subject to arbitration. The threat of extended litigation, including wide-ranging discovery allowed when prosecuting civil claims in court, on behalf of an entire class of workers, provides enormous pressure on employers to settle claims regardless of the validity of those claims.

Now Assemblywoman Rubio goes on to state, "This bill would commit PAGA claims arising in the building and construction industry to the grievance and arbitration machinery of a collective bargaining agreement maintained by the employers and a union in that industry so long as that CBA expressly provides for certain key provisions, including grievance and binding arbitration procedures.

"Pursuant to AB 1654, new Labor Code Section 2699.6 (a) now provides this exemption from PAGA.

"Note that the agreement must prohibit all of the violations of the Labor Code and provide for a grievance and binding arbitration procedure to address those violations and expressly waive the requirements of this part in clear and unambiguous terms and authorize the arbitrator to award any and all remedies available under the new Labor Code.

"Under new subdivision (b), nothing precludes an employee from pursuing any other civil action against an employer." Then finally, the new provisions define an employee in the construction industry.

Hope you appreciate this brief summary of new AB 1654 and its impact on PAGA litigation.