

They're here. And they're waiting.

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Predatory plaintiff attorneys across California are eagerly standing by to take calls from dissatisfied employees who work from home. Why? Because a disgruntled worker, whether he or she knows it or not, has a lethal legal weapon — it's called the Private Attorneys General Act (PAGA).

Simply stated, PAGA is a dubious state law that allows employers to be sued for infractions under the California labor code and face steep penalties as well as attorney's fees.

Perhaps an employee was fired for cause or maybe they left the job dissatisfied because of their experiences with a co-worker. So, the employee finds a lawyer — also known as a plaintiff's attorney. These types of attorneys know that firings or dissatisfaction are not easily proven. They then ask the employee a series of questions regarding labor practices. If the attorney finds out that the employee had to work from home because of COVID-19 but, for example, wasn't reimbursed for their home office and didn't log their break times, the next step is easy: file a PAGA lawsuit.

Stores, farms, restaurants, security companies, manufacturers, suppliers, and many other private sectors of the state's economy are all too familiar with lawsuits filed against employers under PAGA. These lawsuits have not been as prevalent in the standard office environment. But that no doubt will soon change.

After Governor Newsom announced the "stay-at-home" orders, many businesses continued their operations from the homes of their employees, many using makeshift offices and likely their own equipment. Communication is now being conducted by way of Zoom video meetings, conference phone calls and chain emails — all to help ensure social distancing. Employers and employees are doing their part to curb the spread of the coronavirus.

Employers generally understand and follow employment reimbursements. And, most try to reimburse any out-of-pocket expenses incurred by employees. However, the guidelines for reimbursements for stay-at-home workers are not totally clear.

The law requires employers to reimburse employees for all “necessary” and “reasonable” expenses. But, unfortunately, the law isn’t explicit about what those additional expenses may be for an employee working from home. Reams of paper, cell phone usage and printer ink certainly may be easily quantified. Home office space, increased utility costs and even soap and toilet paper could also be reimbursable expenses.

An employer may also face another labor law issue — undocumented breaks taken by hourly employees. Some working from home may be manually documenting their hours. Employers are required to ensure that their hourly employees take the meal and rest periods within their required times, even if that employee is working remotely. Documented timecards indicating meal and rest periods are just as important when working from home.

It’s clear that a disgruntled employee can file a PAGA lawsuit and that employer can be on the hook for thousands more than the original expense. It’s also important to know that these lawsuits can be converted to class action suits and an employer could then be liable for the expenses of all stay-at-home employees, not to mention PAGA penalties and those attorney fees.

Why? All because employers did not realize they needed to pay certain items as reimbursement.

Consult an attorney or human resources professional to ensure your reimbursement policy is in compliance because that single expense can be infinitely cheaper than a class action lawsuit.

The time is here. Don’t wait for trouble.

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