

## **Are California Wage and Hour Violations Undermining the Budget Epidemic?**

The California Supreme Court's decision in *Arias v. Superior Court* has profound implications on California's employment market and economy. Currently, two related enemies lay siege on California, threatening not only the state's future prosperity, but perhaps overall survival. The first aggressor, spearheading the attack, is the state's enormous budget deficit. Once touted as the world's eighth largest economy, California now faces a sixty billion dollar budget crisis and a series of tax hikes and spending cuts that only further endanger the people. The other, less recognizable aggressor is California's thriving underground economy. Mainly comprised of businesses that exploit the constant growth of California's workforce to violate wage and hour laws, the underground economy is responsible for tax evasion, unfair competition, business failures, job losses, and unsafe working conditions. This threat, though less recognizable than the budget deficit, is arguably more lethal; after all, it is at least partially responsible for the budget deficit's birth. Then, once the budget deficit arrives to terrorize California and its citizens, margins tighten and more businesses need to violate wage and hour laws to compete. This frustrates California's efforts to erase the budget deficit. Anyway, regardless of which threat is more striking, taken together, the underground economy and budget deficit are so toxic that some observers rename the Golden State America's first failed state.

The most harmonious way to erase California's budget deficit is to exterminate the state's underground economy. Official state reports emphasize that the underground economy causes California to lose a whopping six and a half billion dollars each year just in unreported taxable wage income. Once California implements an effective program to collect the substantial taxable wage income it loses annually, revenues will be realized directly through additional taxes, penalties and interest, and indirectly through voluntary compliance and the resulting fair competition. Suppose California had collected that money each year for the past ten years. Despite the national recession, the state would currently enjoy a five billion dollar budget surplus rather than a sixty billion dollar deficit. Furthermore, proper wage and tax payments are linked to fair competition. The fair competition, in turn, would render California better equipped to manage an economic disaster like a national or a global recession. This option, as opposed to the budget plans dangerous tax hikes and spending cuts, is preferable in that it kills two birds with one stone; that is, it mobilizes California's silent but deadly underground economy to combat the more recent and imminent budget deficit.

Though Lawmakers recognize the positive connotations of mobilizing the underground economy to combat the budget deficit, the underground economy appears to be indestructible. From 1990 to 2003 California exhausted significant resources and time to avert wage and hour violations. Nevertheless, California's efforts were futile due to the exponential growth of California's workforce and inadequate state funding and resources. In 2003, lawmakers noticed that its failure to deter businesses from violating wage and hour laws set off a minor budget deficit. The deadly combination of the underground economy and budget deficit compelled California to declare, "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy and to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices." With insufficient state resources and nowhere else to turn, lawmakers called in the people for reinforcements in the war against the underground economy by

enacting the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The PAGA deputizes any "aggrieved employee on behalf of himself or herself and other current or former employees" to initiate actions for wage and hour violations on behalf of California. Bear in mind that California receives seventy five percent of any judgment in favor of the employees, with twenty five percent going right into the state's general fund. Still, despite its theoretical brilliance, courts were confused as to whether representative actions initiated under the PAGA had to satisfy conventional class action requirements. This confusion foiled the PAGA's potential to strike underground employment activity on a grand scale.

In *Arias*, the California Supreme Court sorts out this confusion, clarifying that employees need not satisfy class action procedural requirements to win wage and hour representative actions initiated under the PAGA. This decision arms employees and bounty hunting class action attorneys with significant procedural advantages in litigating wage and hour violations. As a result, it effectively allows California more power to discourage violations of the Labor Code, foster fair business, and collect significant funds in the form of civil penalties and taxes.

Contact the [San Diego employment](#) lawyers at Blumenthal, Nordrehaug & Bhowmik to find out more about how wage and hour violations undermine California's economic recovery and every worker in the state can play an important role in putting a stop to these illegal employer practices.